

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



RECEIVED
D.C. OFFICE OF PLANNING
2005 APR 29 PM 4:10

Office of the Director

FROM:  Ellen McCarthy, Interim Director

TO: District of Columbia Zoning Commission

DATE: April 29, 2005

SUBJECT: Preliminary Report for Zoning Commission Case #04-33

Zoning Regulations Text and Map Amendments for the Creation of New
Regulations and an Overlay Zone to Promote Affordable Housing
(Inclusionary Zoning)

I. EXECUTIVE SUMMARY

A. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning recommends that the Zoning Commission schedule a public hearing on the three Inclusionary Zoning (IZ) proposals included in this report:

1. The Office of Planning Mandatory Proposal;
2. The Campaign for Mandatory Inclusionary Zoning's (the Campaign's) Mandatory Proposal, which was submitted to the Commission in November 2004, and;
3. OP's Incentive-Based Proposal

OP favors the first mandatory proposal, which it believes incorporates the most workable elements of the Campaign's proposal and includes new provisions representing possible common ground among affordable housing advocates and the District's housing developers. A group representing some of the housing advocates and developers have been meeting with OP regularly during 2005. However, differences remain among the group, and discussion in public forums have just begun. Therefore, in the interests of having a broad range of proposals for the Commission to consider when soliciting public input and when crafting Inclusionary Zoning regulations, OP also recommends that the Commission set down both the Campaign's original mandatory proposal and the OP voluntary proposal

ZONING COMMISSION
District of Columbia
CASE NO. 04-33
District of Columbia
CASE NO. 04-33
EXHIBIT NO. 16

A map of the generalized areas of the District that may be covered by the proposals is included as Attachment 1, at the end of this executive summary, and in more detail in maps attached to the main report. OP has told the Campaign that some of their target areas have been built out since the Comprehensive Plan was adopted and are no longer appropriate for inclusion. The Campaign has agreed that the map included with this report as Attachment 1 adequately represents the geographic areas described in the Campaign's proposal.

The principal points of the three concepts are compared in Attachment 2 to this executive summary. A detailed comparison is included as an attachment to the body of the main report.

B. PROCEDURAL ISSUES

There are three procedural issues that the Office of Planning wishes to bring to the Commission's attention.

1. Vesting Considerations

Because the mandatory proposals would create an overlay, both would be considered to be a map amendment. As such, the "setdown rule", 11 DCMR § 3202.5, would apply. If the mandatory proposals were considered more restrictive than the current matter of right standard, the more restrictive of the two would apply immediately to all future building permit applications. Neither OP nor the Petitioner believes it would be in the best interests of the public for this to occur. Therefore OP, with the concurrence of the Petitioner, request that the Commission indicate that the setdown rule not apply. OP can also represent that the Office of the Attorney General believes that the Commission has the authority to do this.

2. Public Posting Considerations

The status of this Petition as a map amendment would also require the Petitioner to "post the street frontage of each square affected by the rezoning proposal with a notice of public hearing", 11 DCMR § 3014.3. Strict compliance with this rule would require the Petitioner to post approximately 20% of the land in the District. Clearly this would be unduly burdensome. For this reason OP, on behalf of the Petitioner, requests a waiver of this rule.

3. Advertising and Supplemental Information Considerations

It is OP's understanding that the Petitioner wishes to provide supplemental information to the Commission prior to the hearing. Section 3013.1 of the Commission's rules of procedures permits such a submittal, but disallows the advertisement of the case until twenty days after the materials are received. OP agrees with the Petitioner that time is of

the essence with respect to this initiative, and therefore requests that this rule be waived to permit the Office of Zoning to immediately advertise this case, but to also permit the Petitioner to file supplemental materials no later than 20 days prior to the hearing date advertised.

C. ACKNOWLEDGMENTS

The Office of Planning has been fortunate to be able to work with an extensive array of dedicated groups and individuals in creating these proposals. OP wishes particularly to acknowledge:

- The Inclusionary Zoning Working Group OP organized in 2003, which helped lay the groundwork for the current IZ proposals
- The Campaign for Mandatory Inclusionary Zoning (the Campaign), which is the Petitioner in this Zoning Commission Case, and which submitted its proposal for mandatory IZ to the Commission in November 2004
- The informal group that has been meeting during 2005 to find common ground among several IZ proposals. This group consists of:
 - Members of the Campaign for Mandatory Inclusionary Zoning,
 - Housing Developers and members of the District building industry,
 - Members of Urban Land Institute's Work-Force Housing Task Force

D. BACKGROUND AND PROPOSALS

4. The Concept of Inclusionary Zoning

Inclusionary Zoning (IZ) is a technique used to ensure a mix of affordable and with market rate housing units. In its basic form, it can be

- a) *Mandatory* and require that each new housing development set-aside a certain percentage of units affordable to a specific income range ("set-asides"), or;
- b) *Voluntary* and provide bonus density or other incentives to develop the affordable units. The provision of bonus density or other compensation is not required in an IZ program, but has often helped programs avoid legal challenges. An IZ housing program can be created by City Council legislation, by a Zoning Commission action, or by a combination of the two.

A mandatory program requires the inclusion of affordable housing and may try to compensate a developer or a landowner by granting additional density, reduced fees, etc. Around the country, mandatory programs have been more successful in producing affordable housing than have voluntary programs. While they may be seen as placing greater burdens on developers and having less flexibility, they are also considered more predictable and certain

A voluntary incentive-based proposal seeks to provide incentives that will entice a developer to provide affordable housing, but that will not give the developer a windfall profit. They have not been as successful in producing affordable housing, but they leave the developer free to decide whether there is a market risk to participating in the program. Voluntary programs are typically more flexible, and often use expedited processing as an incentive

The difference between a mandatory proposal and an incentive-based one is fundamental. However, the specifics of the concepts are similar in so many ways that OP is presenting a range of concepts for the Zoning Commission (the Commission) to consider and seek input on through public hearings.

5. Proposals

OP is presenting three concepts for the Commission's consideration:

a) Office of Planning Mandatory Proposal.

A concept from the Office of Planning (OP), based on OP analysis, and discussions with the Campaign for Inclusionary Zoning (the Campaign) and members of the housing development community. This would require the inclusion of workforce housing in residential developments or rehabilitations over a certain size; would establish an Overlay focusing the target areas on selected Metro stations; would relate the amount of affordable housing requirement directly to the amount of bonus density achieved; and would apply an economic evaluation model to the affordability requirements for PUD applications outside of the Overlay area.

- (i) *Applicability.*** Residential projects of 10 or more units in areas around selected Metro stations, most areas identified as opportunity areas or special treatment areas in the Comprehensive Plan. Requirements for projects outside the resulting geographic areas would be determined partially by an economic model developed by OP¹

¹ OP consultants: Robinson & Cole LLP, with The Metis Group

- (ii) *“Set-Aside” Amount of Project to Be Affordable* To be based on a ratio of square footage of affordable housing to square footage of market rate housing beyond that permitted as matter-of-right.
Proposed Ratios:

Rental - 1:1

For-Sale - Between 1:1 and 1:1.5 (to be determined)

(iii) **Income Ranges:**

- Rental Low-Rise
 - 50% of set-aside at 50% AMI,
 - 50% of set-aside at 70% AMI
- Rental Mid-Rise and High-Rise
 - 50% of set-aside at 60% AMI,
 - 50% of set-aside at 70% AMI
- For-Sale 100% of set-aside at 80% AMI

- (iv) *Incentives* Within specified geographic areas, bonus density (up to 20%) would be in direct correspondence to amount of affordable housing constructed. Outside of specified areas, economic model would be used to evaluate appropriate incentives. Possible relaxation of some area-related zoning restrictions

b) Campaign for Mandatory Inclusionary Zoning Proposal:

A concept based on the proposal filed by the Campaign for Mandatory Inclusionary Zoning (the Campaign). The exact language of the Campaign's proposal not being suggested for set-down due to the number of legal insufficiencies that have been identified by the Office of the Attorney General. The Campaign proposal has been the starting point for the consensus-oriented discussions that have resulted in the OP proposal recommended above. It would require the inclusion of workforce housing in residential developments or rehabilitations over a certain size, and seeks to balance this requirement by offering additional density where possible. Its basic provisions include the following:

- (i) *Applicability:* Residential projects of 10 or more units in areas around selected Metro stations, most areas identified as opportunity areas or special treatment areas in the Comprehensive Plan,; the Downtown Development District (DD) as of 2008; all District or NCRC-owned properties that are to be residentially developed; any project seeking an FAR increase

(ii) *Amount of Project to Be Affordable:* 15% of total project for low-rise; 12 % of total project for mid-rise and high-rise; 7.5% of total project for substantial rehabilitation

(iii) *Income Ranges:* 50% at 50% of AMI, 50% at 80% AMI.

(iv) *Incentives.* Up to 20% density bonus, if available

c) **Incentive-Based Proposal:**

A concept from the Office of Planning (OP) that would encourage the voluntary inclusion of affordable housing in residential developments by providing incentives such as bonus density calibrated by an economic model, and streamlined processing

(i) *Applicability:* Same as OP proposal above.

(ii) *Amount of Project to Be Affordable:* Would vary according to standardized economic profile of construction type, as determined with economic model.

(iii) *Income Ranges:* Between 50% AMI and 80% AMI

(iv) *Incentives:* Would need to be higher than either mandatory proposal to provide adequate incentives. Would vary according to standardized economic profile of construction type, as determined with economic model

The proposals are intended to be part of a program to promote the construction of affordable housing units in the District

IZ has proven to be a useful tool for achieving more diverse communities through dispersing affordable housing. It helps generate affordable units in places with strong market demand, where there are often high levels of public services available. It can contribute to the economic health of a city by helping retain workforce households. However, IZ must be considered as only one of many tools in a comprehensive affordable housing program. Compared to direct financial subsidies, inclusionary zoning is not as productive for building affordable units, and is usually not powerful enough to reach very low incomes without additional subsidies.

6. Process and Procedures

OP notes that the proposal submitted by the Campaign includes items that the Office of the Attorney General (OAG) has advised the Campaign are beyond the authority of the Commission to enact and would require separate actions by the Mayor and the City Council.

Therefore the Campaign agrees with having the Commission consider the concepts, rather than all of the specifics, of the Campaign's proposal at this time

E. MAJOR ISSUES

OP believes that the issues noted below are the major ones requiring discussion by the Commission, and input from the public. This list is based on information and reaction gathered during regular discussions with the Campaign and members of the housing development community. The Urban Land Institute has facilitated some of the discussions and some have been held at the invitation of Council Chair Linda Cropp.

1. Areas of Coverage

Both the Office of Planning's and the Campaign's mandatory proposals focus on Metro stops, Development and Housing Opportunity Areas and Special Treatment Areas. OP has worked with the Campaign to reach agreement on the areas that would be covered by the proposals. The principal geographic difference is that, after an adjustment period ending in January 2008, the Mandatory proposal would cover the Downtown Development District (DD), where no additional height or density is achievable. The other proposals would not include the DD.

The coverage areas illustrated in this setdown report are generalized. The areas need to be made more specific and better calibrated.

The Commission must seek input from communities about where, and if, they think it is appropriate to mandate or give incentives for affordable housing under an inclusionary zoning program.

2. How Much of a Project Should Be Reserved for Affordable Units?

In voluntary programs, or a mandatory situation where bonus density is being granted, this issue comes down to what ratio of market rate housing is needed or appropriate to balance an amount of IZ housing. Recent discussions among OP, the Campaign and housing developers have indicated that opinions for high-rise condominiums range from 1 to 1 (50% of bonus) up to 1.5 to 1 (40% of bonus). Discussions indicate an emerging consensus for high-rise rental project ratios of 1 to 1 (50% of bonus), and a smaller percentage for low-rise construction. OP will be using an economic model developed for the IZ program to help refine this discussion.

In mandatory situations where bonus density cannot be granted, such as the DD, policy questions arise around whether a smaller amount of affordable housing should be required and/or whether a longer market adjustment period should be built-in. This policy question does not affect only how to minimize the impact of IZ on developers' or landowners' bottom lines; it potentially impacts the neighborhoods surrounding projects where bonus density is granted. It will be important to carefully examine possible impacts during a hearing process.

3. Costs

Additional sharing of information about hard and soft development costs is needed to continue moving toward common ground on basic assumptions, and to calibrate the economic model that OP has developed to assess relationships among costs, densities, targeted incomes, etc

4. What Should Be the Target Incomes?

Proposed income ranges are between 50% and 80% of the Area Median Income. While most participants in the conversations have indicated that the average of the ranges should be between 65% and 70%, differences remain over how deep or high a range of incomes a program should target. It would be useful to hear more about the ranges, and whether they could vary depending on the combination of development economics and density bonuses or other incentives.

Additional discussion is also needed about how to handle high condominium fees in ways that are not discriminatory towards potential renters or owners yet protect a developer or condominium association

5. Impacts On Neighborhood Character, Transportation, Services and Other Infrastructure

OP, DDOT and other agencies must analyze in more detail where additional height, lot occupancy and/or density can currently be accommodated; forecast what the impact of possible bonus density might be on population, building height and massing, and; then assess what might be the impacts of the forecast changes on neighborhood character, traffic, parking and transportation, and other infrastructure capacities, as well as on schools and services

6. Economic Impacts and Impacts on Housing Market

Inclusionary Zoning's essential economic impact reduces the potential revenues a project might receive if it is open to the market. To determine the feasibility and impact on housing development OP will be using an economic model OP is working with development and real estate professionals to develop the necessary inputs to test Inclusionary Zoning impact. Inputs to the model will include:

- a) Potential revenues including market and affordable housing costs;
- b) Construction costs including hard and soft costs;
- c) Land costs sampled from across the District;
- d) Interest rates for construction and mortgages, and
- e) Estimated investor rates of return.

7. Waivers and Relief

A mandatory program must have provisions for waivers. Discussion is needed on

a) Buyout or Off-Site Provisions:

- (i) How much, if any, of a requirement should be able to be satisfied by contributions to a fund for affordable housing off-site?
- (ii) How far from a development could the off-site portion be constructed and still satisfy the IZ objective of contributing to mixed-income neighborhoods and de-concentrating poverty?

b) Venue for Granting Efficient, Fair Relief

- (i) How much relief should or can be granted administratively? Will this be efficient? How will neighborhoods be protected?
- (ii) When is a hearing before BZA or the Zoning Commission needed?
- (iii) Can a process be structured that permits discretionary review but is not as time-consuming or expensive as a PUD, yet still protects neighborhood interests?

8. Legal Issues / Role of Council and Mayor

Some aspects of the mandatory proposal are not within the Commission's jurisdiction and would require separate action by the City Council and the Mayor to establish an integrated IZ program and set of IZ Zoning Regulations. The Office of the Attorney General will be advising on this.

9. Clarification of Comprehensive Plan Relationships

The Commission will need to consider the relationships among affordable housing objectives, the guidance given by the Generalized Land Use Map, the Generalized Land Use Policies map, and other elements of the Comprehensive Plan.

10. Administrative Issues

- a) Additional consideration is needed about how much administrative responsibility should be the government's and how much should be a developer's: e.g., selection of renters or purchasers from a pool of applicants.
- b) For simplicity and accuracy of administration it may be necessary to agree on certain procedural standards that mimic those in existing programs. The Low Income Housing Tax Credit Program (LIHTC)

has been suggested as such a model

- c) More consideration is needed of a review process that allows for site plan and massing review for projects that are greater than a matter-of-right process, but is quicker, more predictable, and less expensive than a PUD.

11. Affordability Period and Affordability Retention

- a) There are differences of opinion about how long an affordable unit should be required to retain its affordability restrictions. While longer periods retain units in the affordable stock, long periods may also inhibit a unit owner's ability to accumulate capital for climbing the economic ladder or financing a family member's higher education, or may discourage an apartment owner's long-term renovation of a building.
- b) Additional research and discussion with OAG is needed about how best to keep an affordable unit as one serving households within targeted incomes without violating fair housing laws

Attachments to Executive Summary:

Attachment 1 - Map of Potential Areas of Mandatory IZ Coverage

Attachment 2 – Brief Comparison of Principal IZ Concepts

Attachment 3 – Issues Integral to Any IZ Program

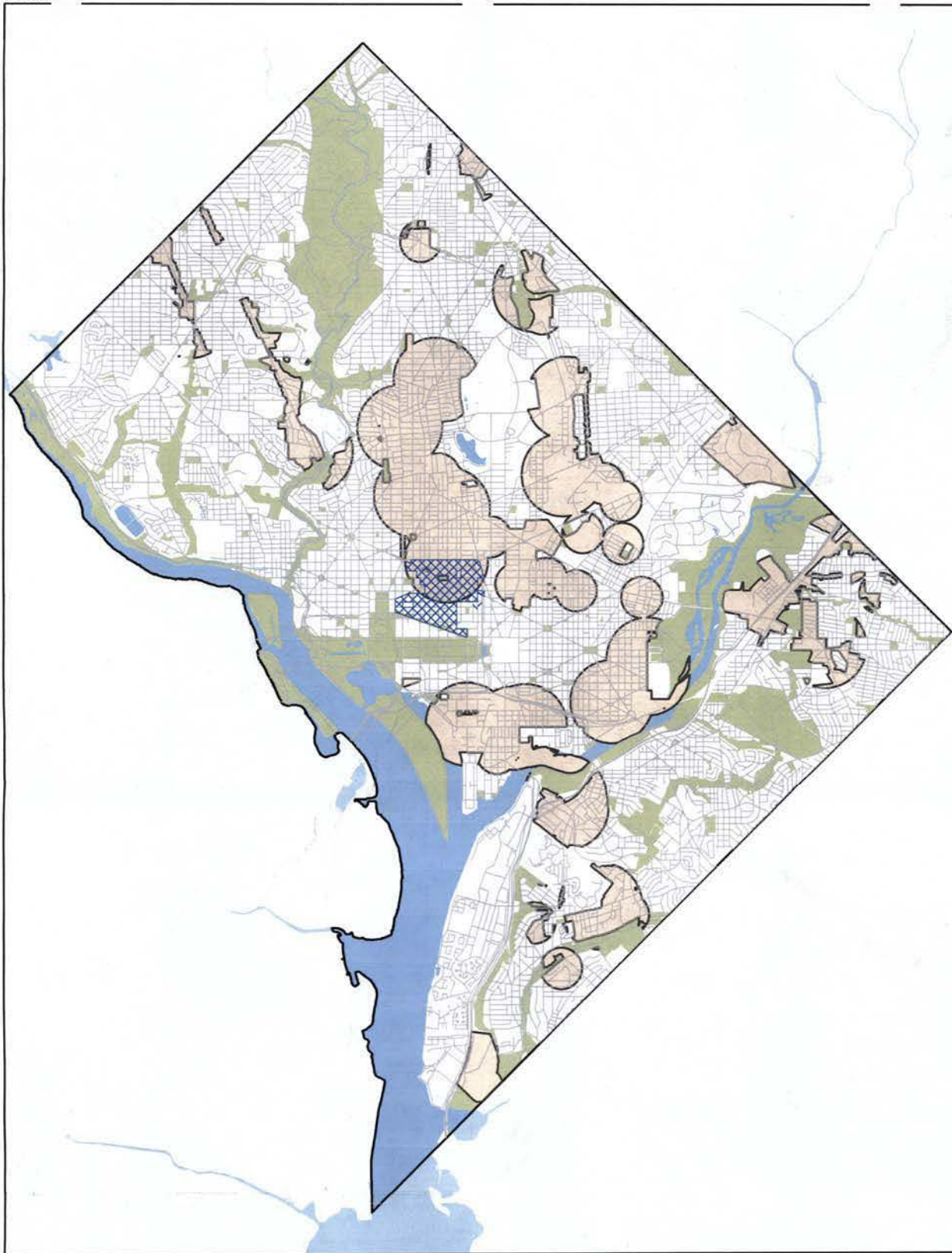
MAIN REPORT, TABLE CONTENTS, AND OTHER ATTACHMENTS FOLLOW

Emc/slc-ar

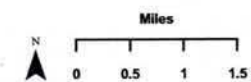
ATTACHMENTS
TO EXECUTIVE SUMMARY

INCLUSIONARY ZONING: BRIEF COMPARISON OF MAJOR ISSUES

TOPIC	OP MANDATORY CONCEPT	ORIGINAL MANDATORY CONCEPT	OP INCENTIVE-BASED CONCEPT	CONSIDERATIONS
THRESHOLD	10 new or rehabilitated units	10 new or rehabilitated units	No threshold.	
TARGET AREAS AND PROJECTS	Mandatory Overlay • 16 Metro station areas: • Housing Opportunity Areas (HOA), • Development Opportunity Areas (DOA), • Several Special Treatment Areas (STA) <i>Excludes DD and R-1 & R-2 Low Density Districts</i> Outside Overlay, require PUDs	Mandatory Overlay • 16 Metro station areas: • Housing Opportunity Areas (HOA), • Development Opportunity Areas (DOA), • Several Special Treatment Areas (STA) • The Downtown Development District (DD), after January 2008 Outside Overlay, require PUDs	Overlay • Most Metro station areas • Housing Opportunity Areas (HOA), • Development Opportunity Areas (DOA), • Several Special Treatment Areas (STA) <i>Excludes DD and R-1 & R-2 Low Density Districts</i> Outside Overlay, require PUDs	Comprehensive Plan permits bonus density as an incentive in only these target areas.
AFFORDABLE SET-ASIDES	Proposed Ratio Affordable SF to Market SF: - o Rental. 1:1 - o For-Sale Between 1:1 and 1:1.5	• 15% of units for New - <u>Low-Rise Buildings</u>. • 12 % of units for <u>Mid-Rise and High-Rise Buildings</u> • 7.5% of units for <u>Substantial Rehabilitation Projects</u>	Matter-of-right set-aside to be pre-determined by economic model <u>Outside Overlay</u> to be evaluated by model on case-by-case basis.	OP to evaluate economic impact through feasibility analysis
INCENTIVES/COMPENSATIONS	• Up-to 20% density increase, where possible • Relaxation of Some Zoning Restrictions	Up to 20% increase over base density, height & area.	Voluntary requires greater incentives: i.e., greater bonus density, shorter processing time	Some vocal resident concern over density increases
TARGET INCOMES	<u>Rental Low-Rise</u>: 50% of set-aside @ 50% 70% AMI, 50% of set-aside at 70% AMI <u>Rental Mid & High-Rise</u>: 50% of set-aside @ 70% AMI, 50% of set-aside at 80% AMI <u>For-Sale</u>: Up to 80% AMI	50% of set-aside @ 80% AMI 50% of set-aside @ 50% AMI Matches Housing Act of 2002	<u>Rental</u>: Section 8 Low -Income (65% AMI) <u>For-Sale</u>: Up to 80% AMI	Income flexibility to compensate for varying factors outside of program's control, such as interest rate changes
ADMINISTRATIVE ISSUES	To Be Determined Seeks to moderate administrative impact on District government	Significant burden on District government	To Be Determined Likely to have least administrative burden for District	Council Action needed to establish full program



Executive Summary - Proposed Inclusionary Zoning Overlay Area



*** Government of the
District of Columbia
Anthony A. Williams, Mayor
Office of Planning - April 28, 2005

This map was created for planning
purposes from a variety of sources.
It is neither a survey nor a legal document.
Information provided by other agencies
should be verified with them where appropriate.

 Inclusionary Zoning

 Water

 Parks

Included Only in Mandatory Proposal

 Downtown Development District

ISSUES INTEGRAL TO ANY IZ PROGRAM

- 1. Authority of the Zoning Commission and Other Legal Issues**
 - a) Boundaries of the Zoning Commission's Authority**
 - b) Balancing Economic Impact of IZ Requirements with Compensatory Density Increases and / or Other Compensatory Incentives**
- 2. Relationship to the Comprehensive Plan**
 - a) Written Elements**
 - b) The Generalized Land Use Map**
 - c) Generalized Land Use Policies Map**
 - d) Summary of IZ relationship to Comprehensive Plan**
- 3. Relationship of the IZ concept to the Zoning Regulations**
 - a) Planned Unit Developments**
 - b) Existing affordable housing incentive overlay zones**
 - c) Other housing incentive overlay districts**
- 4. Policy Issues**
 - a) Appropriate Income-Level To Be Served by IZ Program**
 - (i) Who lives in the District?**
 - (ii) Who works in the District?**
 - (iii) Who is most affected by current market?**
 - b) Appropriate balancing of requirements with incentives**
 - c) Areas and Conditions for Applying an IZ Program in the District**

5. Development Economics

a) Types of Analysis

(i) Delivery Cost

(ii) Opportunity Cost

b) Possible Incentives

(i) Bonus Density

(ii) Tax Abatement

(iii) Quicker Approval

c) Preliminary Economic Analysis

(i) Construction Costs

(ii) Land Costs

(iii) Interest Rates

(iv) Revenues

d) Impacts

(i) Housing Production

(ii) Historic Preservation

(iii) Neighborhood Character

(iv) Population

(v) Transportation and Infrastructure

(vi) Services

e) Administrative Issues

(i) Approval

(ii) Monitoring

(iii) Enforcement

**Zoning Commission Case 04-33
Inclusionary Zoning Preliminary Report**

April 29th, 2005

TABLE OF CONTENTS

II. INTRODUCTION	II-3
A. OFFICE OF PLANNING RECOMMENDATION	II-3
B. PROCEDURAL ISSUES	II-3
C. ACKNOWLEDGMENTS	II-4
D. OVERVIEWS: BACKGROUND AND PROPOSALS IN BRIEF	II-5
E. MAJOR REMAINING ISSUES	II-8
III. INCLUSIONARY ZONING NATIONALLY:	III-13
A. CONCEPTS	III-13
B. APPLICATION AND SUCCESS ACROSS THE COUNTRY	III-13
C. MANDATORY AND VOLUNTARY PROGRAMS	III-13
IV. JUSTIFICATION FOR INCLUSIONARY ZONING IN THE DISTRICT	IV-17
A. MARKET CONDITIONS AND HOUSING AFFORDABILITY	IV-17
B. THE DISTRICT'S AFFORDABLE HOUSING EFFORTS	IV-18
C. INTEREST FROM CITIZENS AND LEADERSHIP GROUPS	IV-20
D. SUPPORT FOR INCLUSIONARY ZONING IN THE COMPREHENSIVE PLAN	IV-20
V. INCLUSIONARY ZONING CONSIDERATIONS AND ISSUES	V-21
A. RELATIONSHIP TO THE COMPREHENSIVE PLAN	V-21
B. RELATIONSHIP OF THE IZ CONCEPT TO THE ZONING REGULATIONS	V-25
C. CONSTITUTIONAL ISSUES	V-26
D. POLICY ISSUES	V-26
E. DEVELOPMENT ECONOMICS	V-32
F. IMPACTS OF INCLUSIONARY ZONING	V-36
G. ADMINISTRATION	V-39
VI. THE OFFICE OF PLANNING MANDATORY	VI-41
A. SUMMARY AND ISSUES	VI-41
VII. THE CAMPAIGN'S MANDATORY PROPOSAL	VII-47
A. SUMMARY AND ISSUES	VII-47
B. ANALYSIS OF CAMPAIGN'S MANDATORY PROPOSAL	VII-50
VIII. THE OFFICE OF PLANNING INCENTIVE-BASED PROPOSAL	VIII-59
A. SUMMARY	VIII-59
B. ANALYSIS OF INCENTIVE BASED CONCEPT	VIII-63
IX. STAKEHOLDER COMMENTS	IX-64
X. AGENCY REFERRALS	X-64

TABLES

Table 1. Sample of Inclusionary Zoning Programs	III-14
Table 2. District Financing of Affordable Units	IV-19
Table 4. Summary of OP Mandatory IZ Proposal	VI-41
Table 5. Summary of OP Incentive Based IZ Proposal	VIII-59

FIGURES

Figure 1. HUD Area Median Family Income vs-Home Purchase Prices.....	IV-18
Figure 2. Housing Developments in Washington DC.....	IV-19
Figure 3. Distribution of Employees by Occupational Wages.....	V-28
Figure 4. Target Household Incomes Helped by District Financing.....	V-29

ATTACHMENTS

Attachment 4. Side-by-Side Detailed Comparison of Concepts	
Attachment 5. Inclusionary Zoning Maps	
Attachment 6. Zoning Districts and Generalized Land Use Correspondence	
Attachment 7. Administrative Responsibilities Assigned to Mayor by Campaign Proposal	

II. INTRODUCTION

A. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning recommends that the Zoning Commission schedule a public hearing on the three Inclusionary Zoning (IZ) proposals included in this report:

- 1) The Office of Planning Mandatory Proposal;**
- 2) The Campaign for Mandatory Inclusionary Zoning's (the Campaign's) Mandatory Proposal, which was submitted to the Commission in November 2004, and;**
- 3) OP's Incentive-Based Proposal**

OP favors the first mandatory proposal, which it believes incorporates the most workable elements of the Campaign's proposal and includes new provisions representing possible common ground among affordable housing advocates and the District's housing developers. A group representing some of the housing advocates and developers have been meeting with OP regularly during 2005. However, differences remain among the group, and discussion in public forums have just begun. Therefore, in the interests of having a broad range of proposals for the Commission to consider when soliciting public input and when crafting Inclusionary Zoning regulations, OP also recommends that the Commission set down both the Campaign's original mandatory proposal and the OP voluntary proposal

A map of the generalized areas of the District that may be covered by the proposals is included as Attachment 1, at the end of this executive summary, and in more detail in maps attached to the main report. OP has told the Campaign that some of their target areas have been built out since the Comprehensive Plan was adopted and are no longer appropriate for inclusion. The Campaign has agreed that the map included with this report as Attachment 1 adequately represents the geographic areas described in the Campaign's proposal.

The principal points of the three concepts are compared in Attachment 2 to this executive summary. A detailed comparison is included as an attachment to the body of the main report.

B. PROCEDURAL ISSUES

There are three procedural issues that the Office of Planning wishes to bring to the Commission's attention.

1) Vesting Considerations

Because the mandatory proposals would create an overlay, both would be considered to be a map amendment. As such, the "setdown rule", 11 DCMR § 3202.5, would apply. If the mandatory proposals were considered more restrictive than the current matter of right standard, the more restrictive of the two would apply immediately to all future building permit applications. Neither

OP nor the Petitioner believes it would be in the best interests of the public for this to occur. Therefore OP, with the concurrence of the Petitioner, request that the Commission indicate that the setback rule not apply. OP can also represent that the Office of the Attorney General believes that the Commission has the authority to do this.

2) Public Posting Considerations

The status of this Petition as a map amendment would also require the Petitioner to "post the street frontage of each square affected by the rezoning proposal with a notice of public hearing", 11 DCMR § 3014.3. Strict compliance with this rule would require the Petitioner to post approximately 20% of the land in the District. Clearly this would be unduly burdensome. For this reason OP, on behalf of the Petitioner, requests a waiver of this rule.

3) Advertising and Supplemental Information Considerations

It is OP's understanding that the Petitioner wishes to provide supplemental information to the Commission prior to the hearing. Section 3013.1 of the Commission's rules of procedures permits such a submittal, but disallows the advertisement of the case until twenty days after the materials are received. OP agrees with the Petitioner that time is of the essence with respect to this initiative, and therefore requests that this rule be waived to permit the Office of Zoning to immediately advertise this case, but to also permit the Petitioner to file supplemental materials no later than 20 days prior to the hearing date advertised.

C. ACKNOWLEDGMENTS

The Office of Planning has been fortunate to be able to work with an extensive array of dedicated groups and individuals in creating these proposals. OP wishes particularly to acknowledge:

- The Inclusionary Zoning Working Group OP organized in 2003, which helped lay the groundwork for the current IZ proposals;
- The Campaign for Mandatory Inclusionary Zoning (the Campaign), which is the Petitioner in this Zoning Commission Case; and which submitted its proposal for mandatory IZ to the Commission in November 2004;
- The informal group that has been meeting during 2005 to find common ground among several IZ proposals. This group consists of:
 - Members of the Campaign for Mandatory Inclusionary Zoning,
 - Housing developers and members of the District building industry,
 - Members of Urban Land Institute's Work-Force Housing Task Force.

D. OVERVIEWS: BACKGROUND AND PROPOSALS IN BRIEF

1) The Concept of Inclusionary Zoning

Inclusionary Zoning (IZ) is a technique used to ensure a mix of affordable and with market rate housing units. In its basic form, it can be:

- a) Mandatory and require that each new housing development set-aside a certain percentage of units affordable to a specific income range ("set-asides"), or;
- b) Voluntary and provide bonus density or other incentives to develop the affordable units. The provision of bonus density or other compensation is not required in an IZ program, but has often helped programs avoid legal challenges. An IZ housing program can be created by City Council legislation, by a Zoning Commission action, or by a combination of the two.

A mandatory program requires the inclusion of affordable housing and may try to compensate a developer or a landowner by granting additional density, reduced fees, etc. Around the country, mandatory programs have been more successful in producing affordable housing than have voluntary programs. While they may be seen as placing greater burdens on developers and having less flexibility, they are also considered more predictable and certain.

A voluntary incentive-based proposal seeks to provide incentives that will entice a developer to provide affordable housing, but that will not give the developer a windfall profit. They have not been as successful in producing affordable housing, but they leave the developer free to decide whether there is a market risk to participating in the program. Voluntary programs are typically more flexible, and often use expedited processing as an incentive.

The difference between a mandatory proposal and an incentive-based one is fundamental. However, the specifics of the concepts are similar in so many ways that OP is presenting a range of concepts for the Zoning Commission (the Commission) to consider and seek input on through public hearings.

2) Proposals

OP is presenting three concepts for the Commission's consideration:

- a) Office of Planning Mandatory Proposal: A concept from the Office of Planning (OP), based on OP analysis, and discussions with the Campaign for Inclusionary Zoning (the Campaign) and members of the housing development community. This would require the inclusion of workforce housing in residential developments or rehabilitations over a certain size; would establish an Overlay focusing the target areas on selected Metro stations; would relate the amount of affordable housing requirement directly

to the amount of bonus density achieved; and would apply an economic evaluation model to the affordability requirements for PUD applications outside of the Overlay area.

(i) *Applicability*: Residential projects of 10 or more units in areas around selected Metro stations, most areas identified as opportunity areas or special treatment areas in the Comprehensive Plan. Requirements for projects outside the resulting geographic areas would be determined partially by an economic model developed by OP¹.

(ii) *"Set-Aside" Amount of Project to Be Affordable*: To be based on a ratio of square footage of affordable housing to square footage of market rate housing beyond that permitted as matter-of-right. Proposed Ratios:

Rental - 1:1

For-Sale - Between 1:1 and 1:1.5 (to be determined)

(iii) *Income Ranges*:

- Rental Low-Rise:
 - 50% of set-aside at 50% AMI,
 - 50% of set-aside at 70% AMI
- Rental Mid-Rise and High-Rise"
 - 50% of set-aside at 60% AMI,
 - 50% of set-aside at 70% AMI
- For-Sale: 100% of set-aside at 80% AMI

(iv) *Incentives*: Within specified geographic areas, bonus density (up to 20%) would be in direct correspondence to amount of affordable housing constructed. Outside of specified areas, an economic model developed by OP and its consultant would be used to evaluate appropriate incentives. Relaxation of some area-related zoning restrictions may also be possible.

b) Campaign for Mandatory Inclusionary Zoning Proposal: A concept based on the proposal filed by the Campaign for Mandatory Inclusionary Zoning (the Campaign). The exact language of the Campaign's proposal not being suggested for set-down due to the number of legal insufficiencies that have been identified by the Office of the Attorney General. The Campaign proposal has been the starting point for the consensus-oriented discussions that have resulted in the OP proposal recommended above. It would require the inclusion of workforce housing in residential developments or

¹ OP consultants: Robinson & Cole LLP, with The Metis Group

rehabilitations over a certain size, and seeks to balance this requirement by offering additional density where possible. Its basic provisions include the following:

- (i) *Applicability*: Residential projects of 10 or more units in areas around selected Metro stations, most areas identified as opportunity areas or special treatment areas in the Comprehensive Plan; the Downtown Development District (DD) as of 2008; all District or NCRC-owned properties that are to be residentially developed; any project seeking an FAR increase.
 - (ii) *Amount of Project to Be Affordable*: 15% of total project for low-rise; 12 % of total project for mid-rise and high-rise; 7.5% of total project for substantial rehabilitation.
 - (iii) *Income Ranges*: 50% at 50% of AMI; 50% at 80% AMI.
 - (iv) *Incentives*: Up to 20% density bonus, if available.
- c) *Incentive-Based Proposal*: A concept from the Office of Planning (OP) that would encourage the voluntary inclusion of affordable housing in residential developments by providing incentives such as bonus density calibrated by an economic model, and streamlined processing.
- (i) *Applicability*: Same as OP proposal above.
 - (ii) *Amount of Project to Be Affordable*: Would vary according to standardized economic profile of construction type, as determined with economic model.
 - (iii) *Income Ranges*: Between 50% AMI and 80% AMI.
 - (iv) *Incentives*: Would need to be higher than either mandatory proposal to provide adequate incentives. Would vary according to standardized economic profile of construction type, as determined with economic model.

The proposals are intended to be part of a program to promote the construction of affordable housing units in the District.

IZ has proven to be a useful tool for achieving more diverse communities through dispersing affordable housing. It helps generate affordable units in places with strong market demand, where there are often high levels of public services available. It can contribute to the economic health of a city by helping retain workforce households. However, IZ must be considered as only one of many tools in a comprehensive affordable housing program. Compared to direct financial subsidies,

inclusionary zoning is not as productive for building affordable units, and is usually not powerful enough to reach very low incomes without additional subsidies.

3) Process and Procedures

OP notes that the proposal submitted by the Campaign includes items that the Office of the Attorney General (OAG) has advised the Campaign are beyond the authority of the Commission to enact and would require separate actions by the Mayor and the City Council. Therefore the Campaign agrees with having the Commission consider the concepts, rather than all of the specifics, of the Campaign's proposal at this time.

E. MAJOR REMAINING ISSUES

OP believes that the issues noted below are the major ones requiring discussion by the Commission, and input from the public. This list is based on information and reaction gathered during regular discussions with the Campaign and members of the housing development community. The Urban Land Institute has facilitated some of the discussions and some have been held at the invitation of Council Chair Linda Cropp.

1) Areas of Coverage

Both the Office of Planning's and the Campaign's mandatory proposals focus on Metro stops, Development and Housing Opportunity Areas and Special Treatment Areas. OP has worked with the Campaign to reach agreement on the areas that would be covered by the proposals. The principal geographic difference is that, after an adjustment period ending in January 2008, the Mandatory proposal would cover the Downtown Development District (DD), where no additional height or density is achievable. The other proposals would not include the DD.

The coverage areas illustrated in this setdown report are generalized. The areas need to be made more specific and better calibrated.

The Commission must seek input from communities about where, and if, they think it is appropriate to mandate or give incentives for affordable housing under an inclusionary zoning program.

2) How Much of a Project Should Be Reserved for Affordable Units?

In voluntary programs, or a mandatory situation where bonus density is being granted, this issue comes down to what ratio of market rate housing is needed or appropriate to balance an amount of IZ housing. Recent discussions among OP, the Campaign and housing developers have indicated that opinions for high-rise condominiums range from 1 to 1 (50% of bonus) up to 1.5 to 1 (40% of bonus). Discussions indicate an emerging consensus for high-rise rental project ratios of 1 to 1 (50% of bonus), and a smaller percentage for low-rise construction. OP will be using an economic model developed for the IZ program to help refine this discussion.

In mandatory situations where bonus density cannot be granted, such as the DD, policy questions arise around whether a smaller amount of affordable housing should be required and/or whether a longer market adjustment period should be built-in. This policy question does not affect only how to minimize the impact of IZ on developers' or landowners' bottom lines; it potentially impacts the neighborhoods surrounding projects where bonus density is granted. It will be important to carefully examine possible impacts during a hearing process.

3) Costs

Additional sharing of information about hard and soft development costs is needed to continue moving toward common ground on basic assumptions, and to calibrate the economic model that OP has developed to assess relationships among costs, densities, targeted incomes, etc.

4) What Should Be the Target Incomes?

Proposed income ranges are between 50% and 80% of the Area Median Income. While most participants in the conversations have indicated that the average of the ranges should be between 65% and 70%, differences remain over how deep or high a range of incomes a program should target. It would be useful to hear more about the ranges, and whether they could vary depending on the combination of development economics and density bonuses or other incentives.

Additional discussion is also needed about how to handle high condominium fees in ways that are not discriminatory towards potential renters or owners yet protect a developer or condominium association.

5) Impacts On Neighborhood Character, Transportation, Services and Other Infrastructure

OP, DDOT and other agencies must analyze in more detail where additional height, lot occupancy and/or density can currently be accommodated; forecast what the impact of possible bonus density might be on population, building height and massing, and; then assess what might be the impacts of the forecast changes on neighborhood character, traffic, parking and transportation, and other infrastructure capacities, as well as on schools and services.

6) Economic Impacts and Impacts on Housing Market

Inclusionary Zoning's essential economic impact reduces the potential revenues a project might receive if it is open to the market. To determine the feasibility and impact on housing development OP will be using an economic model. OP is working with development and real estate professionals to develop the necessary inputs to test Inclusionary Zoning impact. Inputs to the model will include:

- a) Potential revenues including market and affordable housing costs;
- b) Construction costs including hard and soft costs;

- c) Land costs sampled from across the District;
- d) Interest rates for construction and mortgages, and
- e) Estimated investor rates of return.

7) Waivers and Relief

A mandatory program must have provisions for waivers. Discussion is needed on:

- a) Buyout or Off-Site Provisions:
 - (i) How much, if any, of a requirement should be able to be satisfied by contributions to a fund for affordable housing off-site?
 - (ii) How far from a development could the off-site portion be constructed and still satisfy the IZ objective of contributing to mixed-income neighborhoods and de-concentrating poverty?
- b) Venue for Granting Efficient, Fair Relief:
 - (i) How much relief should or can be granted administratively? Will this be efficient? How will neighborhoods be protected?
 - (ii) When is a hearing before BZA or the Zoning Commission needed?
 - (iii) Can a process be structured that permits discretionary review but is not as time-consuming or expensive as a PUD, yet still protects neighborhood interests?

8) Legal Issues / Role of Council and Mayor

Some aspects of the mandatory proposal are not within the Commission's jurisdiction and would require separate action by the City Council and the Mayor to establish an integrated IZ program and set of IZ Zoning Regulations. The Office of the Attorney General will be advising on this.

9) Clarification of Comprehensive Plan Relationships

The Commission will need to consider the relationships among affordable housing objectives, the guidance given by the Generalized Land Use Map, the Generalized Land Use Policies map, and other elements of the Comprehensive Plan.

10) Administrative Issues

- a) Additional consideration is needed about how much administrative responsibility should be the government's and how much should be a

developer's: e.g., selection of renters or purchasers from a pool of applicants.

- b) For simplicity and accuracy of administration it may be necessary to agree on certain procedural standards that mimic those in existing programs. The Low Income Housing Tax Credit Program (LIHTC) has been suggested as such a model.
- c) More consideration is needed of a review process that allows for site plan and massing review for projects that are greater than a matter-of-right process, but is quicker, more predictable, and less expensive than a PUD.

11) Affordability Period and Affordability Retention

- a) There are differences of opinion about how long an affordable unit should be required to retain its affordability restrictions. While longer periods retain units in the affordable stock, long periods may also inhibit a unit owner's ability to accumulate capital for climbing the economic ladder or financing a family member's higher education, or may discourage an apartment owner's long-term renovation of a building.
- b) Additional research and discussion with OAG is needed about how best to keep an affordable unit as one serving households within targeted incomes without violating fair housing laws.

III. INCLUSIONARY ZONING NATIONALLY:

A. CONCEPTS

Inclusionary Zoning (IZ) is a technique used to ensure a mix of affordable housing units with market rate housing developments. It was first used in Montgomery County, Maryland in 1972.

In its basic form, IZ either requires that each new housing development make a certain percentage of units affordable to a specific income range, or provides incentives to do so. How and to what extent this is achieved is up to each community. Typical regulations across the nation ask that anywhere from 10% to 35% of a development's total units be affordable to households between 60% and 80% of the Metropolitan Area Median Income (AMI). In some communities the eligible incomes range from 50% to 110% of AMI. The units may be new construction or substantial renovation, and they may be rental units or sale units. Inclusionary zoning may be mandatory, or be incentive-based. The income ranges and other components are tailored to the goals each community is trying to achieve.

An IZ housing program can be created either by city council legislation or by a zoning commission. An act of legislation by a city council is very similar to rent control in that it limits the rate at which rents can grow for a specified percentage of a development, while permitting the remaining units to be rented at market rate. Inclusionary housing programs can also be enacted through zoning regulations by a zoning commission when there are supporting policy goals within a city's Comprehensive Plan. This method tends to balance the affordability requirement with zoning incentives such as increases in density. Each method affects the design and application of the program differently.

IZ has proven to be a useful tool for achieving more diverse communities through dispersing affordable housing; it helps generate affordable units in places with strong market demand, and where there are often high levels of public and private services available. It can contribute to the economic health of a city by enabling the retention of workforce households.

B. APPLICATION AND SUCCESS ACROSS THE COUNTRY

IZ programs vary as much as the number of jurisdictions that have enacted them. The table below provides a sample of the many municipalities that have inclusionary zoning. Data is not available for all facets of their programs.

C. MANDATORY AND VOLUNTARY PROGRAMS

Both mandatory and voluntary IZ programs rely on strong housing markets to deliver units. Voluntary programs are usually considered to be less effective in producing affordable units, but Mandatory programs may require studies justifying the request. Mandatory programs are more

Table 1. Sample of Inclusionary Zoning Programs

Jurisdiction	Type	Incentives	Trigger	Target Population	Justification/Goal	Units Created
San Francisco, CA – 2002	Mandatory 10% to 12%	10% - None 12% - Conditional Use	10 units	60% of AMI renters; 100% of AMI owners	Decent housing & suitable environment for every family	90 completed 745 pipeline
Boston, MA - 2000	Effectively Mandatory	None	10 units needing variances	5% to 80% 5% to 120%		200 completed
Santa Fe, NM	Mandatory 11% to 15%	11% to 16% bonus density	6 units	65% of AMI owners, 60% of AMI renters	Diversity and affordable housing	
Davis, CA	Mandatory	1 1 bonus	5 units		City/Regional economic need for affordable units	
Cambridge, MA - 1988	Mandatory 15%	30% bonus density	>10,000 SF of housing	80% of AMI	Preserving economic Diversity	131 completed
Montgomery County, MD -1979	Mandatory 12 5%-15 0%	15%- 22% bonus density	50 units	65% of AMI	Housing employed households	11,000 completed
Pitkin County, CO	Mandatory	Any discretionary relief		Locally employed		
Dallas, TX	Voluntary/ Mandatory in some areas	Density bonus dependent on base zone			Discrimination lawsuit agreement	
Hilton Head, SC	Voluntary	Bonus dependent on target income		Low to Moderate		
Orlando, FL	Voluntary	Dependent on area		Low to Moderate		
Austin, TX	Voluntary 10%	Fee waivers Expedited review	4 units	80% of AMI	Stimulate housing for Austin's low and moderate income residents	1,800+ with 5-year control for rental & 1-year control of for-sale units

Source: American Planning Association PAS Report; DC Office of Planning, 10/02, Business & Professional People for the Public Interest, 11/03; District of Columbia Inclusionary Zoning Study Task 2 - August 9, 2004 .

effective in producing affordable housing and can offer greater predictability for developers. The most successful IZ programs, in terms of numbers of affordable units built, are the mandatory programs that also offer incentives as compensation for the requirements.

The title of a recent study by The American Planning Association (APA) is "Mandatory Programs Produce More Housing"². The APA cites studies in California (1994 and 2004), Cambridge, MA, and the Washington DC Metropolitan area. However, the APA also notes "theoretically, with enough of a subsidy any voluntary program could work extremely well". It states, voluntary

² Zoning Practice September 2004, Issue Number Nine. *The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs*, by Nicholas J Brunick. page 2.

programs will work when they are: 1) implemented as if they were mandatory; 2) when other planning policies make the voluntary inclusionary component highly attractive; and 3) when the program is “unusually sophisticated” or the staff is “particularly gutsy”.³

Mandatory programs have the advantage of predictability for landowners and developers. From the landowner or developer’s perspective, they can affect market conditions by potentially decreasing land value. There are legal questions about mandatory programs. Typically, legal challenges to inclusionary zoning are based upon a claim that by requiring a property owner to set aside a number of housing units as affordable, the government is in effect “taking” private property without paying the owner for the land. The Fifth Amendment of the United States Constitution prohibits the taking of private property without just compensation. However, land use regulations are typically not found to affect an unconstitutional taking of property if it substantially advances a legitimate public interest and does not deny an owner economical viable use of his land. These legal issues are discussed in a separate memo from the Office of Attorney General found in the appendix of this report.

Incentive-based programs are less intrusive on markets initially and do not carry the same risks of unintended consequences – such as possible changes to the economic conditions currently favoring housing development in C-3-C zone districts. Incentive-based programs can also be structured to incorporate design review and citizen input. On a case-by-case basis, an incentive-based program with a sophisticated economic model may be able to encourage the provision of substantial amounts of affordable housing, especially in discretionary cases requiring other public approvals. However, a case-by-case model loses the incentive of matter-of right approvals and opens itself to criticism of inconsistent application.

To assist with the design of an incentive based program OP hired a consultant team to explore best practices and to create a very sophisticated model for evaluating the proposal. This is described later in this report.

³ IBID page 3

IV. JUSTIFICATION FOR INCLUSIONARY ZONING IN THE DISTRICT

The Office of Planning has investigated IZ for several reasons, including:

- The impact of the current housing market on housing affordability;
- The impact of the District's affordable housing efforts
- The interest in IZ from a broad spectrum of citizens and leadership groups
- The support for IZ within the Comprehensive Plan

A. MARKET CONDITIONS AND HOUSING AFFORDABILITY

Many factors have been affecting the cost of housing, including job growth, interest rates, population change, and land use. Perhaps the single greatest factor affecting the cost of housing, particularly in the District, is the jobs per household balance.

In the Washington Metro Area there were roughly 2,935,500 jobs⁴ in November 2004 and 1,839,800 households⁵ for a jobs to household ratio of 1.6. Jobs are projected to grow faster than households over the next 25 years so that by 2030, the ratio will approach 1.8.⁶ Stephen Fuller, PhD, of George Mason University's Center for Regional Analysis, has forecasted that if the current job growth trends continue the Washington Metro region will become the most expensive place to live in the country outside of New York City. In the District during 2004, there were 676,400 jobs and 280,300 working residents⁷. According to the 2000 US Census over 25% or 70,000 people of the District's workforce work outside the District. This means that non-District residents fill 465,500 jobs in DC. At 1.6 jobs per household, this means that at least 290,000 households work in the District, but live in other jurisdictions.

As the District's fiscal and quality of life conditions continue to improve, and the region's transportation system has difficulty keeping pace with growth, a greater percentage of those 290,000 households not living in the city may consider moving to the District to be closer to their jobs. This would continue to increase the cost of housing in the District. The situation is exacerbated by the fact that the number of higher wage jobs, and therefore the ability to pay higher rents or prices, are growing at a faster rate than lower incomes. This further squeezes lower income households out of available housing.

The following chart illustrates the degree to which District housing costs have escalated compared to Washington DC Metropolitan Median Family Income (AMI).

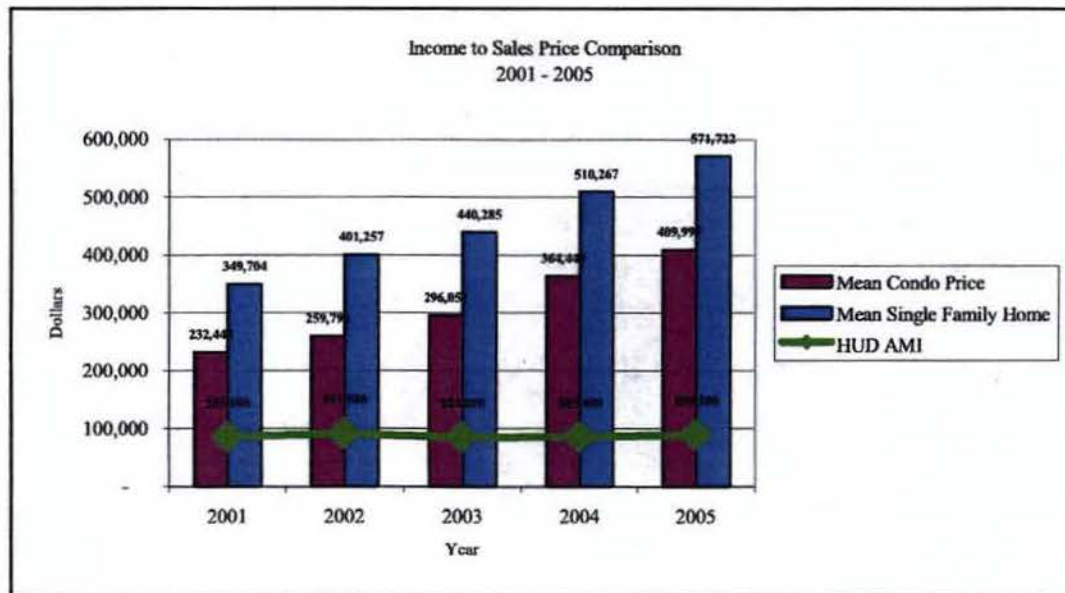
⁴ US Department of Labor, Bureau of Labor Statistics, Metropolitan Area Employment and Unemployment

⁵ Washington Area Council of Governments, Round 7.0 Econometric Model Results

⁶ This is based on the capacity of land approved for office versus land approved for housing

⁷ DC Department of Employment Services 12-04

Figure 1. HUD Area Median Family Income vs Home Purchase Prices



Source: Income - US Department of Urban Development; Sales Prices - Greater Capital Area Association of Realtors.

The HUD Washington Metropolitan AMI has stayed relatively flat, but prices have risen dramatically. While low interest rates have helped the buyers leverage their income to a greater extent; it is only part of the answer. The drop in interest rates can only account for roughly a 17% increase in prices over the past five years. Yet prices have increased 76% for condos and 63% for single-family homes. Part of the increase is the District of Columbia's own increase in Median Family Income, which went from \$46,283 in 2000 to \$55,750 in 2005, a percentage increase of 20.5% over five years.

The pace of sales has also increased dramatically. In 2001 there were 2,671 condos sold, but in 2004 there were 3,644 sold for an increase in annual sales of 36.4%. Sales through March of 2005 are up 20% from the same time last year.⁸ Single-family sales have increased in number but not to the extent that of condos. The single biggest factor in the tremendous increase in the number of condos is the available supply of both new construction and rehab of existing building.

B. THE DISTRICT'S AFFORDABLE HOUSING EFFORTS

In 2001 The Williams' Administration began to report on the affordable housing projects receiving financial assistance from any of the city's agencies including the Department of Housing and Community Development, the DC Housing Finance Agency, and the DC Housing Authority. That information has been posted on the Office of Deputy Mayor for Planning and Economic Development's Website since 2002. The pipeline report tracks projects where the District has:

⁸ Greater Capital Area Association of Realtors.

- 1 Assisted tenants toward purchasing their buildings, thereby keeping them affordable,
- 2 Provided developers financing for the renovation or redevelopment of existing properties,
3. Provided developers financing for the construction of new housing, and
- 4 Redeveloped major public housing sites through the federal HOPE VI program

Table 2. District Financing of Affordable Units

Fiscal Year	Unit Type		Construction Type		Tenure		TDC
	Units	New Units	New	Rehab	Home-ownership	Rental	
1,999	1,558	694	235	1,323	254	1,304	\$ 101,155,568
2,000	1,902	240	314	1,588	211	1,691	\$ 169,308,058
2,001	3,353	1,336	882	2,471	716	2,637	\$ 338,408,048
2,002	2,418	476	413	2,005	412	2,006	\$ 241,400,118
2,003	2,740	560	277	2,463	199	2,541	\$ 285,397,903
2,004	2,183	1,348	959	1,224	457	1,726	\$ 268,719,940
Pipeline Projects*	3,493	2,527	2,871	622	623	2,870	\$ 702,234,131
Total Subsidized Units	17,647	7,181	5,951	11,696	2,872	14,775	\$ 2,106,623,766

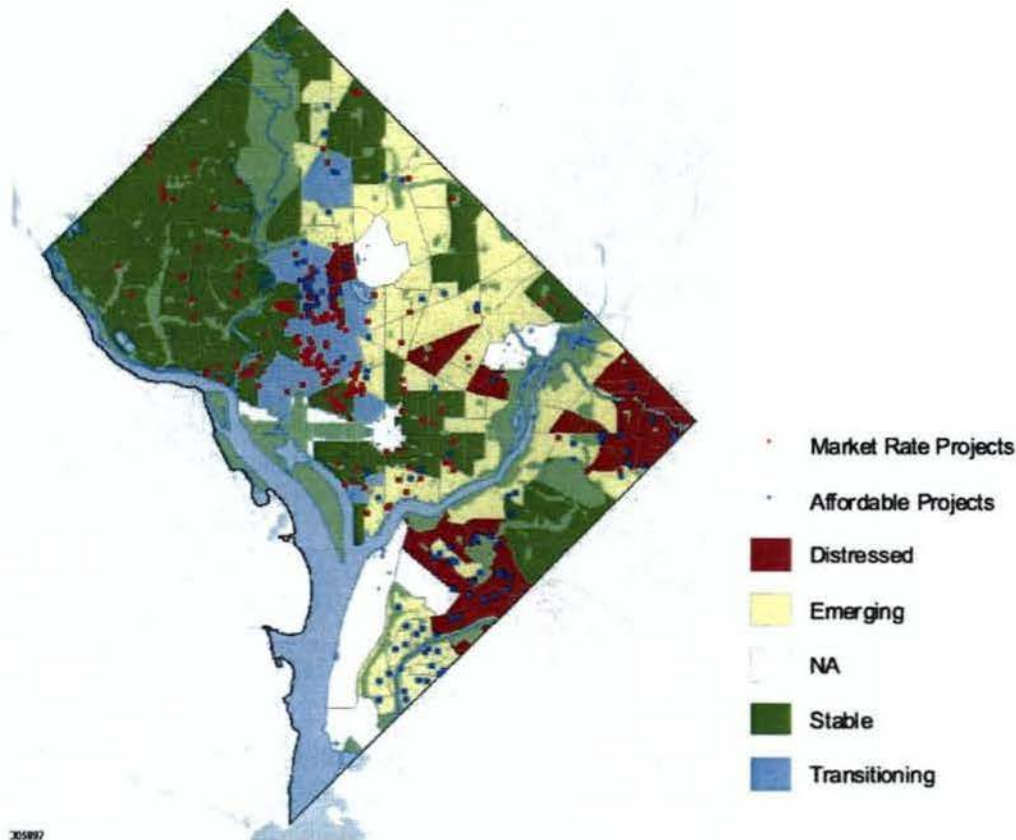
Source Office of Deputy Mayor for Planning and Economic Development, 1/05

Table 2 above documents the extent to which the District has been able to increase the number of affordable units in the District. While this production has provided a large number of units of affordable housing for lower income households the location of these projects tend to follow a pattern of where land is cheapest. Figure 2, the map below shows the location of both affordable and market rate unit development in the District over the past seven years. With a few exceptions the majority of market projects are locating in stable and transitioning neighborhoods, while most of the affordable projects are being located in emerging or declining neighborhoods.⁹

This has the effect of concentrating low-income households in certain parts of the city. This is an unsustainable pattern because continued concentration of low-income households will require continued subsidy to attract public and private services.

⁹ DC OP Research neighborhoods across a variety of socio-demographic and economic characteristics. Stable neighborhoods were consistently above average across all factors. Transitioning neighborhoods were showing dramatic signs of improvement. Emerging neighborhoods showed some positive signs, but were under performing across several factors. Finally, Declining neighborhoods were below average across most measurements.

Figure 2. Market Rate & Affordable Housing Development in DC



Source: DC Office of Planning, 04-2005.

C. INTEREST FROM CITIZENS AND LEADERSHIP GROUPS

The record for this case offers ample evidence of support for some form of IZ program by individual citizens, unions, ANCs and civic groups throughout the city, as well as some of the better-established residential developers in the District. The Mayor's Housing Initiative of legislative and regulatory reform that preceded the Housing Act of 2002 included a commitment to inclusionary zoning. The City Council expressed its support for inclusionary zoning in January 2005.

D. SUPPORT FOR INCLUSIONARY ZONING IN THE COMPREHENSIVE PLAN

It is the opinion of the Office of the Attorney General and OP that the establishment of an IZ program by the Commission would be not inconsistent with the Comprehensive Plan. This is discussed in Section V of this report.

V. INCLUSIONARY ZONING CONSIDERATIONS AND ISSUES

This section deals with the overall issues that must be addressed when considering any type of inclusionary zoning proposal for the District. It considers:

- IZ in relation to the Comprehensive Plan
- The relationship of the IZ concept to the zoning regulations
- The need to address constitutional issues
- Policy issues
- Development economics
- The potential impacts of IZ
- Administrative issues

Later sections of this report examine the details of the specific proposals being recommended for setdown in this case.

A. RELATIONSHIP TO THE COMPREHENSIVE PLAN

OP believes the concept of IZ is supported by several of the Comprehensive Plan's written elements, can be applied in ways that are not inconsistent with the Generalized Land Use Map, and is supported by designations on the Generalized Land Use Policies Map.

1) Written Elements

The District's Comprehensive Plan contains policies in several sections that support diversity and inter-relationship of responsibilities among neighborhoods to meet the needs of all residents. The Plan also states clearly that housing is key for access to employment, transportation, retail, and other services. Specifically, clauses supporting affordable housing and housing for low or moderate-income households are policies and goals found in Chapter 3, the Housing Element, in all eight of the Ward Plans, the Downtown Development Overlay District/Housing Priority Area, the Uptown Arts Special Treatment Area, and the Reed-Cooke Special Treatment Area,

The Housing Element defines target households as those earning 80% of the Area Median Income (AMI) and 50% of AMI. These are called Moderate Income Households and Low Income Households respectively. The federal Department of Housing & Urban Development (HUD) researches, publishes, and updates annually the AMI for a family of four. Adjustments are made for household size. This is further described in Section X of this report. Affordable housing is generally defined as having annual rents that do not exceed 30% of a family's annual household income.

A list of Comprehensive Plan citations from the General Element, the Housing Element and the Land Use Element are included below, with the emphasized sections in bold italics.

CHAPTER 1· GENERAL PROVISIONS ELEMENT

Providing For Diversity and Overall Social Responsibilities

111 1 Each distinct neighborhood of the District is an integral part of a diverse larger community that contributes to the District's attractiveness and strength

(a) Although many residents have sufficient means or individual support systems to be self-reliant, other residents are periodically more dependent on the larger community for support or assistance in their daily living; and

(b) While the District must strive to increase educational, employment, and other opportunities to reduce such dependency, all neighborhoods should share in the overall social responsibilities of the community, including, but not limited to, housing the homeless, feeding the hungry, accommodating the disabled, and welcoming residents of diverse backgrounds and needs.

CHAPTER 3· HOUSING ELEMENT

300 Declaration of Major Policies

300.4 Housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities

300 6 The District should continue and intensify its efforts to identify and address issues applicable to the elderly population, including institutional housing and community-based residential facilities. Zoning and health regulations should be designed to promote an increase in supply, security, and affordability of housing for the elderly.

301 *Housing Goal*

301.1 It is the goal of the District to have adequate affordable housing for all District residents in communities that have access to services and facilities to meet their needs.

302 Housing: General

302 1 The general objectives for housing are to *stimulate production of new and rehabilitated housing to meet all levels of need and demand and to provide incentives for the types of housing needed at desired locations.*

302 2 The policies established in support of the general objectives for housing are as follows.

(b) Review and recommend suitable regulatory zoning, tax, and financing incentives under appropriate controls to meet housing production goals, particularly for low-income, moderate-income and elderly households;

(h) Establish concrete goals for the location, type, size, and cost of new housing units by ward and neighborhood based upon a needs assessment study to be conducted by the executive branch using the latest census and other available data for the District, to be done at least every ten (10) years, and

303 Low and Moderate Income Housing

303.2 The policies established in support of the low- and moderate-income housing objectives are as follows:

(d) Provide zoning incentives, as appropriate, to developers prepared to build low- and moderate-income housing, such as permitting additional densities in exchange for incorporating low- and moderate-income housing in development projects; tie provision of housing into large-scale commercial developments where zoning benefits are sought; and give zoning preferences to mixed-use sites that include housing near appropriate Metrorail stations;

304.2 The policies established in support of the housing for the elderly objectives are as follows:

(c) Provide zoning incentives to developers prepared to build elderly housing, such as permitting additional densities in exchange for incorporating elderly housing in development projects, and give zoning preferences to mixed-use sites which include housing near appropriate Metrorail stations; and

CHAPTER 11 LAND USE ELEMENT

1100 Declaration of Major Policies

1100.2 District neighborhoods are the cornerstones of the District's social and physical environments.

(b) The Land Use Element supports incentives for residential and commercial development east of the Anacostia River. In addition, it encourages a substantial amount of new housing, primarily in housing opportunity areas and near Metrorail stations...

The Comprehensive Plan also lays the groundwork for three housing incentive overlay districts that have been implemented through the Zoning Regulations.

- *The Downtown Development Overlay District/Housing Priority Area.* §903 identifies the creation of a mixed-income residential community within the Downtown core as a major objective of the Comprehensive Plan.
- *The Reed-Cooke Special Treatment Area:* §1127.2(a) designates a portion of Adams Morgan as a special treatment area where one policy is to "provide for the development of new housing".
- *The Uptown-Arts Special Treatment Area:* §1130.2(n) designates portions of 14th and U Streets, NW as a special treatment area where one policy is to "provide new housing opportunities."

2) The Generalized Land Use Map (GLU)

The Comprehensive Plan Generalized Land Use (GLU) map provides guidance for the implementation of the goals and policies in the written elements. Attachment 6 indicates the correspondence between zone districts and the generalized land use categories. In comparing the GLU map and Attachment 6, it appears that the following residential areas may be able to receive density increases and not be inconsistent with the GLU map's land use designation.

- An area designated for Moderate Density Residential on the Generalized Land Use Map and zoned at an intensity of R-5-A or lower;
- An area designated Medium Density Residential on the map and zoned at an intensity of R-5-B or lower;
- An area designated for High Density Residential use and zoned at an intensity of R-5-D or lower.

It is important to note that this is an interpretation of only one *illustrative* part of the Comprehensive Plan. The GLU map, as well as the Generalized Land Use Policies (GLUP) map, provides illustrative guidance.

It is also important to remember that the GLU map is not always an illustration of existing land uses. The map charts intended land use policies. Some portions of the map have not been revised since the Comprehensive Plan was adopted in 1984. The present Comprehensive Plan process is identifying areas where there are conflicts between existing land uses and those areas' designations on the Generalized Land Use map. This will assist in identifying areas where the generalized land use designation may need to be changed.

3) Generalized Land Use Policies Map (GLUP)

The GLUP map designates three types of areas special areas where focused planning attention, concentrated development, or additional density, may be appropriate:

- *Development Opportunity Areas (DOAs)* - DOAs are areas that offer opportunities to accommodate new growth and development. These areas may be designated for housing, commercial development, employment centers, or for a mixture of uses.
- *Housing Opportunity Areas (HOAs)* - HOAs are areas where the District expects and encourages significant concentrations of new or rehabilitated housing. Although HOAs are not the only areas where new housing units will become available, they represent some of the largest concentrations in the City.
- *Special Treatment Areas (STAs)* - STAs are areas that exhibit unique physical, social, or functional characteristics and features and require case-specific planning actions. STAs may be defined by functional criteria, such as the need for well-targeted and coordinated planning program initiatives to achieve common objectives.

As with the GLU map, the GLUP map provides illustrative guidance to the Comprehensive Plan and must be interpreted in the context of the Plan's written elements.

4) Summary of IZ Relationship to Comprehensive Plan

The Office of the Attorney General (OAG) believes it is within the Authority of the Zoning Commission to establish incentive-based inclusionary zoning programs in addition to those already contained in the Zoning Regulations. (See Section VII, below). The written elements of the Comprehensive Plan indicate that an incentive-based IZ program is consistent with the Comprehensive Plan, as long as the housing provided by the program is in areas that have access to appropriate services and facilities.

The OAG has also stated that it is within the authority of the Zoning Commission to establish mandatory inclusionary zoning programs as long as the programs are firmly grounded in the Housing Goal of the Comprehensive Plan¹⁰ and provide for relief from the Inclusionary Zoning requirements.

B. RELATIONSHIP OF THE IZ CONCEPT TO THE ZONING REGULATIONS

The District has been achieving inclusionary housing in two different ways, both of which are incentive-based. This first way is in existing overlays including the Uptown Arts District, the Reed-Cooke Neighborhood and the Downtown Development District that were created from specific language found in the Comprehensive Plan. The second method is through an emphasis by Office of Planning with respect to the amenities and benefits proffered through the Planned Unit Development process of the Zoning Regulations.

1) Existing Affordable Housing Incentive Overlay Zones

Reed-Cooke: This permits a special exception to add 10 additional feet of height (the equivalent of an extra floor) to a building that provides low or moderate-income housing equal to 50% of the bonus gross floor area. A "moderate" income household in the case of Reed-Cooke is considered to earn up to 95% of the AMI.

Uptown Arts Overlay District: This overlay permits 3 square feet of bonus density for every 1 square foot of "below-market housing uses" constructed within the overlay. There are different total bonus caps for each base zone within this overlay. The Uptown Arts also gives some specific guidelines for setting the rents and sales prices of the affordable units. However, the affordable housing provision of the Uptown Arts Overlay has only been used once, as bonus density has been more easily achievable through the provision of other preferred uses.

2) Planned Unit Developments

Chapter 24 of the Zoning Regulations regulates the process and methods by which Planned Unit Development Cases are evaluated. It lists housing in general, and affordable housing in particular,

¹⁰. "It is the goal of the District to have adequate affordable housing for all District residents in communities that have access to services and facilities to meet their needs"[10 DCMR § 301.1].

as public amenities that can be offered. The PUD review process enables the District to take a comprehensive look at a development and assess the potential benefits and/or drawbacks. Issues such as increased traffic, and quality of design, are measured and evaluated in considering a project for approval. Since late 2002, OP has made it clear to PUD applicants that OP regards the provision of affordable as the single most important proffer of public benefits and amenities to accompany an application. Since OP began encouraging the inclusion of affordable units, approximately 150 units of affordable housing have been included in PUDs that are under construction or in the advanced pre-production stages. OP is continuing to work with developers on including affordable units as part of PUD applications.

C. CONSTITUTIONAL ISSUES

In considering an inclusionary zoning program, the principal legal question is does the program unconstitutional infringe on private property rights. These issues have been examined separately by Office of the Attorney General for the Zoning Commission.

D. POLICY ISSUES

1) The Appropriate Income-Level To Be Served by IZ Program is based on several factors:

- a) Who Lives in the District: The current AMI for the Washington D.C. metropolitan region for 2005 is \$89,500. This income for a family of four is often considered the starting point and is then broken down into target ranges of the AMI and household sizes. The current breakdown calculated with straight percentages is seen in Table 3 on the following page.

The median household income for a family living in the District is \$55,750. This is approximately 62% of AMI for the metro region. OP will use HUD's Comprehensive Housing Affordability Strategy database to provide further analysis of the number of families these income ranges in need in the District.

Table 3. HUD AMI by Household Size and Employment Examples

2005 Area Median Family Income
Family of 4 = \$ 89,300

Family Size	50% of AMI		80% of AMI	
	Income	Sample Job Description	Income	Sample Job Description
1	\$ 31,250	Pharmacy Technician	\$ 50,010	Graphic Designer
2	\$ 35,700	Medical Technician w / 1 child	\$ 57,150	Dietician w / 1 child
3	\$ 40,200	Dental Assistant w / 2 children	\$ 64,300	Pharmacist w / 2 children
4	\$ 44,650	Security Guard & Home Care Aide w / 2 children	\$ 71,440	Shipping Clerk & Rehab Counselor w / 2 Children
5	\$ 48,200	Maid & Veterinary Assitant w / 3 children	\$ 78,580	Payroll Clerk & Computer OPerator w / 3 Children

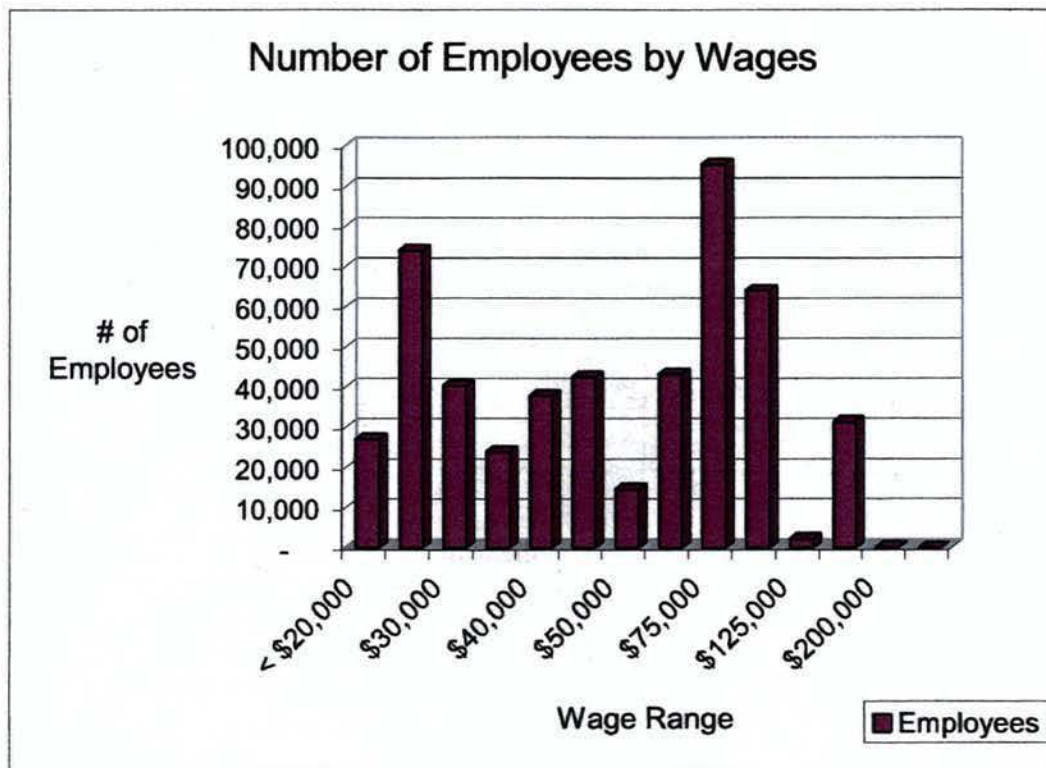
Source: 2005 HUD AMI, 2003 Bureau of Labor Statistics.

- b) Who Works in the District: Inclusionary Zoning is an important tool for further economic development in the District. The cost of labor is an important factor for businesses to locate and succeed in the region. An area's cost of living affects an employers' ability to attract workers. If the cost of living rises too high, then business may find it difficult to attract employees and therefore may choose to expand or move elsewhere. For this reason it is useful to research who works in the District. The Bureau of Labor Statistics (BLS) within the Department of Labor tracks occupations and the wages paid for both states and metropolitan areas.¹¹

¹¹ Notes about Occupational Wage Data:

- The BLS Occupational Wage Data is just on wages paid it does not include other earned income an individual may receive.
- Occupational wage data is from 2003 so it is two years old when the HUD Metropolitan AMI was \$84,800 as opposed to the figure of \$89,300 it is for 2005.
- At the regional level there is an average ratio of 1.6 of jobs to every household, which means on average household income is considerably higher than the wage data itself.
- The occupations counted do not include the self-employed or other categories not reported by employers to the Department of Labor.

Figure 3. Distribution of Employees by Occupational Wage.



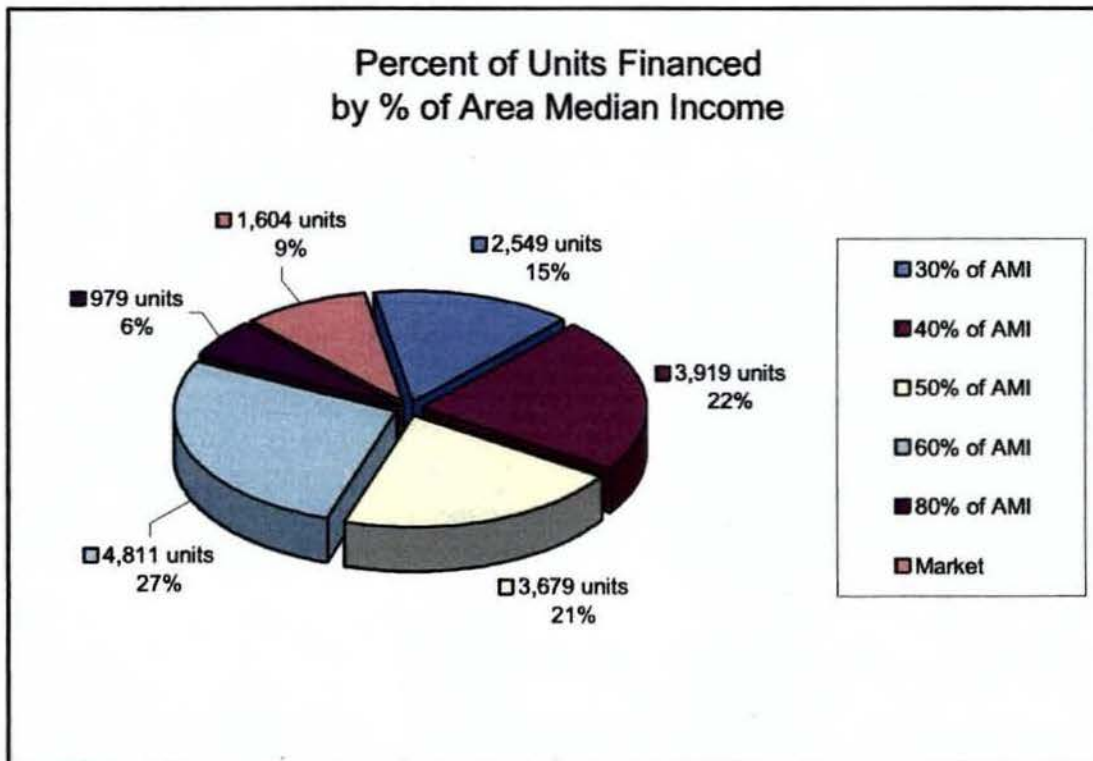
Source: Bureau of Labor Statistics, 2003

The median wage paid in the District in 2003 was \$46,000. While the median is important to consider, so is the distribution. Figure 3 above shows that fewer employees are distributed around the median. Most employees are grouped either considerably lower or higher than the median. The 33rd percentile of occupational wages is roughly \$35,000 or 39% of the HUD Metropolitan AMI. While the 66th percentile of occupational wages is roughly \$64,200 or 72% of the HUD Metropolitan AM.

- c) **Who is Most Affected by the Current Market:** There are differing opinions concerning who is most affected by the current market and who is most in need. Several years ago DHCD conducted a study that determined family size units were in the shortest supply in the District. Evidence supporting this includes the Census Bureau's population estimates, which based the decline of the District's population on the fact that larger households are leaving in favor of smaller households with fewer children. Research conducted by the Campaign and the DC Fiscal Policy Institute concluded that there is greater need to assist smaller households.

Certainly the lowest income households with the fewest options are most at risk of losing affordable housing to the private sector market forces. As stated in Section III.A, the increased condominium sales partially stems from the conversion of apartment buildings. While is very difficult to know quantitatively, there is considerable anecdotal evidence of market rate affordable buildings converting to expensive condominiums. In addition, the most recent data developed for the Comprehensive Housing Strategy Task Force indicates that households earning even up to \$60,000 dollars are declining as a percent of the total population, whereas households earning over \$60,000 are increasing as a percent of the District's population.¹²

Figure 4. Target Household Incomes Helped by District Financing



Source: Office of the Deputy Mayor For Planning & Economic Development, 01/05

- d) Who is Being Helped by Existing District Programs: Over the past seven years the District has provided direct financial assistance for the development of over 14,000 units with another 3,500 in the pipeline for funding commitments. Figure 4 breaks down the units assisted into the households

¹² Source: US Census, ESRI Business Information Systems, 2004 Estimates; Economic Research Associates

they serve. Only 6% of the units financed by the District are targeted at incomes between 60% and 80% of the AMI. The vast majority of units are targeted at families below 60% of AMI. Part of this is due to the fact that most of the financing tools for affordable housing are restricted to lower incomes. There are very few tools targeted to families of more moderate incomes.

2) What Are the Existing Comprehensive Plan Targets?

The Comprehensive Plan contains considerable language encouraging diverse neighborhoods, assisting lower-incomes with housing and special needs populations. Target income ranges in the Comprehensive Plan are 50% and 80% of AMI.

3) Balancing Requirements with Incentives

From a policy basis it is necessary to decide to what extent the District will attempt to balance the requirements of an Inclusionary Zoning Policy with compensation in the case of a mandatory program. Clearly a voluntary program requires incentives for it to work at all. Some jurisdictions with mandatory programs such as Montgomery County have decided to compensate developers through density bonus, while other such as San Francisco, California and Boston, Massachusetts have chosen to offer little or no compensation in the form of density bonuses or other methods.

In 1996 the District had zero new housing construction permits. It has only been since 2000 that the District has seen the tremendous boom in new housing construction. It has been a rare convergence of factors that has led to the current development phase. Regional population has been growing steadily, interests rates have remained low, regional traffic congestion is continuing to worsen, nationwide there has been renewed interest in urban living, and, most importantly, the quality of life in the District has improved. Since 2000 the District has seen over 15,200 units of housing either newly constructed or substantially rehabilitated. Another 8,900 are currently under construction with another 19,000 in the pipeline.

Over the past several decades the District has continued to lose population from a peak population of 802,000 in 1950 to 572,000 in the year 2000. Despite the tremendous boom in housing production the net gain in units after demolitions is somewhere between 5,800 and 10,000¹³, the US Census Bureau believes we are continuing to lose population. The primary cause behind their assertion is households are getting smaller in the District.

The continued economic and fiscal health of the District makes it necessary to sustain the current development trend. For this reason the Office of Planning has approached mandatory inclusionary zoning from a compensation perspective. OP intends to determine this balance by testing a variety of development scenarios in an economic model discussed in Section IV.F.

¹³ OP recently contracted for a study of demolition permits versus new construction.

If the balance between affordable units and bonus density is not struck correctly, there could be a negative impact on housing production. Not only could this cause problems in terms of improving the District's tax base, it could mean that no affordable units, which depend on the market rate units, would be produced.

4) Appropriate Geographic Areas

Most areas of the city are already zoned at the maximum level indicated on the GLU map of the Comprehensive Plan. There are areas in which current zoning is less than what would be indicated as appropriate, or would be permitted by the guidance given by the Generalized Land Use Map. However, the GLU map is not the sole factor in guiding decisions on where additional is appropriate, or where density may be inappropriate.

At the same time, there are other District and federal programs that may limit the ability to give bonus density for an inclusionary zoning program. These may be true of historic preservation districts, transferable development rights receiving areas and the DD housing incentive area. The Congressionally mandated 1910 Height Act definitely encumbers the Commission's ability to increase densities in ways not encountered by other cities.

Historic Districts: Capitol Hill for example, may seem to be a major opportunity area for locating bonus density, since the Land Use Map designates most of it as "Moderate Density Residential", which, under the zoning guidelines, would permit up to R-5-B zoning. Yet most of Capitol Hill is zoned R-4, and is a historic district, covered by row houses of a relatively small scale. It would be difficult to achieve a 20% increase in density without destroying the scale and character of the neighborhood.

TDR Receiving Zones: There are five Transfer of Development Rights receiving zones in the central part of Washington. In many of the receiving Squares, enough development rights have been purchased to permit the maximum possible development for those areas, given existing restrictions on lot occupancy, height, and the ability to receive TDRs. In such locations, there would be no way additional density could be used as incentives or compensation for inclusionary housing.

The Downtown Development District: The Housing Production Act of 2002 and the implementing changes to the Zoning Regulations have already permitted residential buildings to be built to a lot occupancy and FAR limited only by the Height Act. There is no additional bonus density that can be achieved in the DD.

The 1910 Height Act: This height restriction is Congressionally mandated. If other cities have height restrictions, they are almost always municipally imposed and can be changed to respond to other worthy public objectives – such as enabling the construction of workforce housing in an expensive land market.

The above limitations notwithstanding, there is ample support for density increases in many sections of the Zoning Regulations and the Comprehensive Plan.

Most importantly, the OAG believes that, with respect to an inclusionary zoning program, the Housing Elements of the Comprehensive Plan, together with the City Council's recent expression of support for an inclusionary zoning initiative, make it "not inconsistent" with the Comprehensive Plan for the Zoning Commission to permit increases in FAR above the level suggested on the generalized land use map.

The most likely areas where higher densities could be supported are:

- Transit Stations:
- Housing Opportunity Areas,
- Development Opportunity Areas and
- Special Treatment Areas on the Comprehensive Plan Generalized Land Use Policies Map.

However, focusing on even these limited areas presents difficulties:

First, it creates a patchwork quilt of areas across the city and may drive development out of the areas where it would apply in favor of areas where it does not.

Second, the Housing Opportunity Areas include public housing projects and many sites east of the River in which neighborhoods have asked for for-sale housing and more market rate housing, yet, imposing inclusionary zoning requirements there may defeat the goal of achieving new housing and de-concentrating poverty.

Third, there is considerable citizen concern in many parts of the city that density increases will cause excessive demand on existing infrastructure, especially traffic parking and schools.

Finally, some of the HOAs and DOAs are also historic districts, TDR receiving areas, or part of the DD.

E. DEVELOPMENT ECONOMICS

1) Types of Analysis

Evaluating a mandatory and voluntary program requires different types of analyses that are appropriate to each program. Opportunity cost analysis is appropriate to a voluntary program, while the delivery cost analysis is appropriate to a mandatory program.

- a) **Delivery Cost** – Delivery cost is the potential gap between the hard and soft costs – inclusive of profit, but separate from land cost – and the value of an affordable unit. At lower densities the gap can be negligible or even non-existent depending on target income, but at higher densities the gap can

become larger. There are two approaches within a delivery cost method:

- The first makes an assumption of a fixed “reasonable” rate of return. While this return may be similar to market goals it may be below many investors and cause them to invest elsewhere.
- The second starts with a straight market rate project’s return and then seeks to hold that original return constant by balancing the affordability requirement with compensation. Given the importance of the current development activity to the District, the Office of Planning is leaning toward this approach. The advantage of this technique is the potential creation of a constant ratio of requirement to compensation that is maintained across locational factors such as potential revenue and land costs.

The Office of Planning through discussions with the Campaign, developers, and other real estate professionals, has been working to agree on a model. The some in the development community has proposed a very simply model that provides a basic analysis. OP has been developing a more sophisticated model with our consultant hired to assist in the development of an incentive based program. Once the discussions are complete OP will be using both models for our analysis in our final report to the Commission. If delivery cost is not balanced in a mandatory program then developers will not be able purchase land for new development at current price. There is the danger that the delay waiting for land prices drop to adjust may cause the District to miss the rest of this development cycle.

- b) Opportunity Cost – is the cap between the full market value of a unit and the affordable value of a unit. The analysis uses the value of an incentive to fill that full gap. In an example that reflects current numbers, the average sales price for a newly constructed condominium is running about \$450 a square foot or more. Affordable units that are comparably sized would average roughly \$200 per square foot depending on the target income. Finally, the incentive in the form of a density bonus would be equivalent to the land a developer would have to purchase to build the same number of units. Land is averaging around \$100 per square foot. In this scenario it would take a minimum of 2.5 square feet of bonus density for every square foot of affordable units or ratio of bonus affordable to bonus market of 1:1.5. Preliminary analysis suggests this actual improves the return of the developer on a total project basis. The potential difficulty with this type of incentive calculation is anything that potentially increases risk-adjusted rate of return could eventually be absorbed into the price of land, thereby reducing the effectiveness of the incentive.

2) Possible Incentives

- a) **Bonus Density** – Bonus density is the most typical incentive used. Its value is typically measured by the cost of land that would have to be purchased to build the same additional units.
- b) **Tax Abatement** – The District passed a tax abatement program for mixed-income projects as part of the Housing Act of 2002. However, because the way the abatement program worked it was unclear what the value to developers was going to be. This uncertainty in addition to the fact it didn't adequately compensate developers kept anyone from using it. The Deputy Mayor's office is currently working to renew the tax abatement program.
- c) **Expedited Approval** – For an incentive based voluntary system, expedited approvals can save a developer money and reduce the risk involved by being able to deliver a project faster. For instance, reducing a PUD approval process from a year to perhaps three months would reduce the interest paid to equity investors. Conversely in a mandatory program, if approvals take longer to complete, the opposite will happen. It will reduce the number of developers interested in building in the District and make any program less successful.
- d) **Design Flexibility** - While not a normal incentive, some design flexibility with regards to lot occupancy, courts, and height will make it easier to access the bonus density and make the approval process run more smoothly. It will be important to determine to what extent design flexibility can be extended in order to protect things like neighborhood character.

3) Preliminary Economic Analysis

A proper economic analysis of the proposals to determine their feasibility and impact on development must include several inputs into a model that will test not only the interaction of the inputs but the sensitivity to change. OP will be employing an economic model developed especially to assist with Inclusionary Zoning in the District.¹⁴ Inputs include:

- a) **Revenues** - As discussed in section III.A., market prices are strongly related to the number and income of people looking for housing or the overall demand. As the number of higher income jobs increase regionally and in the District, so will the willingness to pay more for housing. The next thing that drives revenues are the location amenities of a given site such as neighborhood schools, metro access, retail services, environmental quality, and the perception of safety.

¹⁴ Model is developed by Robinson & Cole, and the Metis Group through conversation with OP.

Rents in areas of the District that have seen the most market development are varying between \$2.10 to \$2.40 per net rentable square foot. This does not include economic loss due to concessions to attract tenants such as one months rent free, which would lower expected revenues to \$1.93 to \$2.20 per net rentable square foot.

- b) **Construction Costs** – Construction costs for housing can vary dramatically between the types of construction such as wood frame or steel and concrete, and the target market the developer is aiming for such as luxury condos. Construction costs are made up of hard costs for building materials and machinery and soft costs such as construction interest, architectural fees and permit fees. Hard costs are starting at roughly \$90-\$100 per square foot for wood frame construction and \$120-\$130 for concrete and steel. This would not include the premiums paid for higher quality materials and labor often needed for luxury projects or historic preservation.
- c) **Land Costs** – Land costs vary dramatically across the city by over \$100 per square foot of development. While the average is around \$100 per square foot the upper range is over \$150 per square foot and the lower bound is below \$25 per square foot. Land values are directly related to locational amenities that drive revenues and the cost of construction for the building type that is permitted by zoning.
- d) **Interest Rates** – Interest rates affect both the cost of construction and therefore the delivery costs of housing, but also the purchasing power of both the affordable households and the market rate households. A climate of rising interests rates makes development, particularly condo development more risky, because their delivery costs are rising and their potential revenues may be declining.
- e) **Rate of Return** – Finally, a competitive rate of return should be output of a normal analysis. This becomes the target benchmark by which to evaluate the impacts of an inclusionary affordability requirement and the potential compensation or incentives thought can be brought to bear. The Office of Planning's goal is to design a program that will maintain a developer's base return of a market rate project.

Using the data above and other inputs it is possible to create an economic model that estimates a competitive rate of return developers might currently seek in a project. The revenues can then be adjusted reflect the impact of the affordable units. Without compensation developers would be unable to achieve the same rate of return that reflects the inherent risks in real estate development. With construction costs and interest rates external factors that can not change substantially, the only

input that could adjust would be the cost of land. Theoretically without compensation the cost of land would have to adjust to reflect the decrease in income from the affordable units.

This however would temporarily stall new development and developers who had purchased land under a straight market rate assumption might not be able to proceed. This would risk stopping development in the District for this development cycle. Given the District is just returning to fiscal health and additional residential development considered vital to the continued improvement of the District.

Using the economic it is possible to test the impact of various forms of incentives and/or compensation that keeps developers and landowners whole. This also has the added benefit of keeping them competitive for land in commercial zones that office developers seek.

F. IMPACTS OF INCLUSIONARY ZONING

1) Housing Production

Roughly 12,000 units of housing have been constructed or substantially renovated in the District in the last 5 years. This healthy market helps to create both the conditions that make and inclusionary zoning program possible and the conditions that make an inclusionary zoning program necessary.

Voluntary inclusionary zoning programs carry no risk of negatively impacting market rate housing production. Because it is voluntary, it does not add a requirement or a cost factor to project unless a developer chooses finds the incentive sufficient to balance the cost of providing the affordable housing. However, voluntary programs are typically not as successful at producing affordable housing as are mandatory programs.

While a well-designed mandatory program is likely to produce more affordable housing than a voluntary program, mandatory programs can also have negative impacts on market-rate housing production. The housing market responds principally to changeable factors such as costs, interest rates, and job creation. It also responds to the amount of profitable housing that can be built on a site. In residentially zoned areas, the requirements and compensations simply need to be well enough balanced to not reduce the incentives for building market rate housing. In mixed use zones, such as the C-3-C district where both housing or office construction are permitted and where housing construction has only recently become profitable, it is particularly important for IZ programs not to tip the economic balance back in favor of office construction.

2) Historic Preservation

There are at least two potential impacts:

- Historic preservation objectives may restrict the amount of bonus density an inclusionary zoning project can receive.
- More neighborhoods may seek to become historic districts.

A successful IZ program will result in an increased number of projects seeking to avail themselves of incentives such as bonus density and an expedited project approval. Typically, historic preservation is associated with restricting height and/or density as part of its mandate to maintain the integrity of individual buildings of the character of a historic district. Because of this perception there may be an increased number of neighborhoods seeking historic district designation as "protection" against the height and density increases associated with inclusionary zoning. This would seem to put an IZ program and historic preservation objectives at loggerheads. However, this may not be accurate. The Greater 14th Street Historic District encompasses much of the Uptown Arts Overlay, which is a zone district that grants bonus density for projects providing certain-preferred uses. Of 11 projects in the 14th Street district reviewed by the Historic Preservation Review Board (HPRB), 7 were able to use at least some bonus density.

Nevertheless, historic preservation considerations need to be considered as legitimate grounds for relief from IZ requirements in any mandatory IZ program.

OP will work with the HPRB staff to examine these issues in greater detail before any public hearing.

3) Neighborhood Character

The maintenance of neighborhood character is important to the success and acceptance of an IZ program. This character has both physical and demographic aspects.

One of the primary objectives of IZ is the integration of affordable housing with market rate housing, both within buildings and in locations throughout the city. To help achieve this integration the exteriors of IZ units must be indistinguishable from market rate units.

The principal challenge to maintain neighborhood character in an IZ program is designing effective incentives or compensations that do not also change the character of neighborhoods where the housing is built. This is especially challenging when the chief incentive or compensation an IZ program can offer is increased density. In the District, density increases are likely to be seen as imperceptible to minimal in low-density single-family residential districts, somewhat noticeable in the medium and high-density zone districts, and of potentially significant in the moderate density residential zone districts.

Both the mandatory and the voluntary programs exclude from the Inclusionary Zoning Overlay, zone districts intended to comprise single-family detached zone districts (R-1 and R-2). A PUD application would be required for participation in the program. A 2-acre minimum lot size is required for a PUD in these zones, and there are very few vacant tracts of this size available. Even if such a 2-acre PUD were given a 20% density increase, the impact on density would be small. The density per acre would go from 11.5 houses to 14 houses in the R-1-A zone, and from 29 houses to 35 houses in the R-2 zone. The change in appearances would be minimal.

In the medium and higher-density zone districts, where buildings are already mid and high-rise construction, IZ units and bonuses could be accommodated with the addition of one or two floors to a matter of right building and/or possible increases in lot occupancy. In cities without a height limit tradition, such increases would likely not be considered significant. In Washington, they may be.

It is in the moderate density residential zone districts, particularly the R-4 district, that there is the most potential for change to neighborhood character. If the primary incentive or compensation for inclusionary zoning is increased density, the principal way such density can be increased is by the conversion of rowhouses into flats, or flats into low-rise apartment buildings. Such conversions could be achieved with relatively few physical changes by decreasing the amount of land the zoning regulations require to be associated with each dwelling unit in the R-4 zone. However, there could be a change in neighborhood character accompanying the increase in apartment buildings within a zone that is otherwise single family rowhouses, or two-family flats.

With respect to demographics, inclusionary units are intended for working families earning between 50% and 80% of the Area Median Income. For a 4 person household in the District in 2005, this represents a range from \$44,650 to \$71,440. These are typically working class households that might not otherwise afford the surging costs of housing in the District.

4) Population

OP will estimate the potential impact on population after proposals are set-down. Granting a certain percentage of bonus density does not mean that there will be a population increase corresponding to that bonus density. As noted above, there are only certain types of areas where the Comprehensive Plan currently supports inclusionary zoning. Within those areas, there are only some sites that would be considered undeveloped or underdeveloped by a developer. While a project may increase the density on the project's site, there may also be a decrease in overcrowding in other locations, as more affordable housing becomes available.

OP will specify Squares that would be covered by the Inclusionary Zoning Overlay after refining the locational criteria for areas around designated Metro stops, Housing and Development Opportunity Areas, Special Treatment Areas, and specified neighborhoods. OP has not yet decided on the appropriate scenarios to project for types of uses in mixed use zones, the appropriate percentages of build-out to use for matter-of-right, PUDs and the addition of bonus density. It will also be necessary to adjust unit numbers to account for possible density-increase limitations in areas such as historic districts.

5) Transportation, Infrastructure and Services

The Comprehensive Plan supports increasing density for objectives such as affordable housing and inclusionary zoning only in areas with adequate transportation and services. It will, therefore be essential to determine the appropriate modal splits for each area; identify existing levels of service for Metro stations and major intersections in these areas; and assess impacts of different population scenarios on Metro stations and major intersections currently at levels of service C, D, E and F.

From a regional perspective, IZ permits working class families to live closer to where they work. Rather than having to commute long distances and add to traffic congestion, by their ability to live closer their overall impact may actually be reduced through IZ.

While WASA has already developed water and sewer capacity for a city of 900,000, it will be necessary to determine if there are specific water or sewer-deficient areas within parts of the District that may see populations increases as a result of an inclusionary zoning program.

Because children living in inclusionary zoning units are less likely to attend private schools than children living in market rate units, it will be important for OP to work with the District of Columbia Public Schools to assess the ability of schools serving the IZ overlay areas to absorb enrollment increases based on different population projections.

G. ADMINISTRATION

It is important that the administration of inclusionary zoning be smooth, efficient and fair to all those concerned.

Administrative Impact on Developers: One medium to large-scale developer working in the District has told OP that each of their projects in Montgomery County has necessitated the hiring of a specific person charged with administering the paperwork required by the County's Moderately Priced Dwelling Unit program.

Administrative Impact on the District: The District will be required to devote considerable time on program administration. The necessary services will include:

- Pre-qualifying eligible tenants and homeowners, at potentially different percents of AMI eligibility, and keeping such lists up to date.
- Valuing and pricing inclusionary units
- Reviewing and certifying projects for initial compliance and monitoring, on at least an annual basis, to be sure that the project continues to comply.

If one of the project's incentives is streamlined processing, it may be necessary to hire additional staff to enable this. The assessment of the Campaign's administrative requirements found in the attachments gives an idea of what might be required.

There will also be ancillary administrative issues such as resolving potential conflicts between different District program objectives. For instance given the protections afforded to students in the D.C. Human Rights Law, and additional protections given to tenants, students with limited incomes can qualify for the affordable units, and then graduate and take a lucrative job, that far exceeds the income limits. This thereby circumvents the intent of the inclusionary housing program, since the former students legally may not be turned out in favor of those whose need is demonstrably greater for the inclusionary housing.

VI. THE OFFICE OF PLANNING MANDATORY PROPOSAL

A. SUMMARY AND ISSUES

Table 4. Summary of OP Mandatory IZ Proposal

TOPIC	PROPOSAL	ISSUES
THRESHOLD	10 new or substantially rehabilitated units	---
TARGET AREAS	Conceptually, a ½ mile radius from the following Metro stations, with exclusion of areas zoned R-1 and R-2. Friendship Heights Tenleytown Van Ness/UDC Cleveland Park Woodley Park New York Avenue Rhode Island Avenue Brookland Fort Totten Takoma Potomac Avenue Stadium-Armory Minnesota / Benning Deanwood Benning Road Congress Heights Anacostia Navy Yard Waterfront Mount Vernon Square Shaw/Howard U Street Columbia Heights Georgia/Petworth Conceptually, a ¼ mile radius from the following Development Opportunity Areas (HOAs) and Housing Opportunity Areas (DOAs), with exclusion of areas zoned R-1 and R-2: Columbia Heights (also Metro) Howard Gateway Fort Totten (also Metro) Mount Vernon Square (also Metro) Kenilworth/Parkside CHECK Camp Simms Congress Park (also Metro) Washington Highlands Upshur Street Clinic Area Fort Lincoln	OP and the Campaign have worked together to include only those Metro station areas, and HOA's and DOA's where increased density may be possible under the Comprehensive Plan Generalized Land Use Map. However, the map is advisory. Other goals and policies may supersede the map. Boundaries will vary and may include areas immediately adjacent to areas illustrated in the Attachment ___ map. It will be necessary examine individual areas in greater detail as part of the hearing process Campaign's proposal also includes DD Overlay.

	Wisconsin and Western Aves. (also Metro) U Street (also Metro) Buzzard Point/Near Southeast (also Metro areas) Georgia and Missouri Avenues Georgia and New Hampshire Avenues (also Metro) Rhode Island Avenue (also Metro) New York Avenue Corridor Hechinger Mall Area H Street, NE Minnesota/Benning (also Metro) Benning Road and G Street SE MLK, Jr. Avenue Nannie Helen Burroughs Ave. Conceptually, the following Special Treatment Areas, as generally delineated on the Comprehensive Plan Generalized Land Use Map and not otherwise completely included within the ½ mile radius from a Metro station listed above Northeast 1/Eckington Yards Deanwood STA St Elizabeth's DC Village Uptown Arts/ 14th Street Corridor Conceptually, the portions of the following neighborhoods. For illustrative purposes they are illustrated as a ¼ radius from the neighborhood's designation on OP's GIS maps. Boundaries will need to be specified after setdown Truxton Circle Ledroit Park Bloomingdale Ivy City Near Northeast Trinidad North Cleveland Park Chevy Chase Brentwood Edgewood East Capitol Street/Capitol View Logan Circle	
AFFORDABLE SET-ASIDES	Proposed Ratio Bonus Affordable SF to Bonus Market SF: - o High-Rise Rental: 1:1 - o High-Rise For-Sale Between 1:1	OP believes it is appropriate to measure SF of GFA rather than number of units

	and 1.1.5 o Low Rise: 3:2 PUDs to be given target IZ percentage based on OP economic model, but to be analyzed individually with other benefits taken into consideration.	Final ratio to be evaluated by economic model
INCENTIVES / COMPENSATIONS	Up-to 20% density increase, where possible Relaxation of Some Zoning Restrictions	OP will work with DDOT after setdown to project likely density increases and assess their impacts on traffic and parking, and with other agencies such as the DCPS and WASA to examine other impacts.
TARGET INCOMES	<u>Rental Low-Rise</u>: 50% of set-aside @ 50% 70% AMI; 50% of set-aside at 70% AMI <u>Rental Mid & High-Rise</u> 50% of set-aside @ 70% AMI; 50% of set-aside at 80% AMI <u>For-Sale</u>. Up to 80% AMI	There are administrative and enforcement difficulties for both the government and for owners & developers in having different %'s of AMI for inclusionary units within the same project. It may be preferable to have one % of AMI for ownership units and one % of AMI for rental units.
DEVELOPMENT STANDARDS	• <u>Unit Types</u> Reflect range and types in the overall project. • <u>Units Sizes</u>: Average SF of IZ units could be less than for market rate units, as long as prescribed minimum standards (see Campaign's Mandatory Proposal) were met • <u>Unit Distribution</u>: Evenly distributed vertically and horizontally throughout all buildings and/or phases of project • <u>Exterior Finishes</u>: Same as Market Rate Units • <u>Interior Finishes and Appliances</u> Requires additional study	The development community has suggested that it would be difficult to design smaller inclusionary units than market rate units, especially for high-rise buildings, because framing requirements are generally uniform for building tiers OP notes that there are often different gfa's for the same unit type within projects and does not believe this will be a problem It may be reasonable for inclusionary units to be not located on the top two floors of a high-rise structure because of the premium rates those floors command
PRICING METHODOLOGY	Initial Housing Cost: Determined through LIHTC methodology	Condo fees may price units out of affordability range. Needs further exploration.
CONTROL PERIOD	Rental: TBD: Between 30 and 40 years Ownership. TBD. Between 10 and 20 years, renewable if sold during control period	Most other jurisdictions' IZ programs specify 1- to 15 years for control of ownership units, in order to promote equity accumulation for objectives such as financing college educations

RECAPTURE OF FOR-SALE UNITS	Before control period: Owner receives purchase price + CPI, possibly with housing inflator + basis improvements After 20 yrs.: Owner would sell at market rate Profit split between seller and an affordable housing fund.	Contributions to a DC-administered affordable housing fund would require Council approval.
SUBMISSION REQUIREMENTS	Submit site plans or plats. Identifying. Number of inclusionary units Location of inclusionary units within project Size of each inclusionary unit Pricing of each inclusionary unit Schedule for completion of inclusionary units Massing Diagram	Campaign's proposal does not include a massing diagram
PROJECT PLAN APPROVAL	<u>Not Yet Fully Discussed</u> With basic components below: <u>Basic Certification of Compliance.</u> for matter of right projects. <u>Medium Level Review.</u> Built in administrative flexibility for massing to accommodate bonus density or limited off-site provision nearby. <u>Full Waiver:</u> a full waiver of all requirements through buyout or hardship would require BZA or ZC review.	• Developers stress that predictability of process and time-frame is essential • All involved wish to minimize situations where discretionary review or applications for relief are needed • For voluntary concept's medium level review, may be appropriate to consider a waiver or reduction of PUD filing fees if full PUD review is required for an inclusionary housing project.
RELIEF FROM REQUIREMENTS	See Above Objective would be to set standards for Administrative review that would minimize need to go through a BZA-type process	Need to explore varying parking requirements to reduce cost of affordable units
APPLICANT POOL AND SELECTION	Priorities - 1st priority to DC residents - 2nd priority to those employed in DC - Must Be Primary residence - Must have not owned home in DC for past 5 years	
	Financial Status: Mortgage or rental credit qualifiable	
	<u>Not Fully Discussed</u> <u>Public Purchase Option:</u> DC or non-profit housing provider should have 1st refusal for percent of IZ units.	• Concern about having more than 30% of units owner by govt. or non-profit • Concern about govt. or non-profits renting out

		units owned in for-sale building
	<u>Selection.</u> Government establishes and maintains list of eligible applicants Developers and owners responsible for selection from qualified applicant pool.	
CONTINUING RENTER/OWNER ELIGIBILITY	<u>Rental.</u> Annual income-certification <u>For-Sale.</u> Must Be Primary residence Income may increase <u>Both.</u> Sub-lease only with permission.	A rental requirement to move may conflict with other DC laws and require Council legislation .
ONGOING ADMINISTRATION	<u>Approval Process</u> - Review and certify building permits Applications must - Meet IZ requirements or, - Meet off site / buyout provisions, or - Apply to BZA for relief. - Give Notice to Housing Agencies of rights of first refusal <u>District Interaction with Future Occupant</u> - Certify occupants as income eligible - Maintain list of available properties <u>Monitoring</u> - Landowner reports to District on tenants' income - Non-Compliance cures (first available) - District matches tax records for owner occupied units - Temporary Waivers to rent. - Annual reporting to Council. <u>Enforcement</u> - Punitive measures (C of O revocation, Fines, etc.) - Enforcement of deed restrictions	Full program and administration will require action by City Council.

VII. THE CAMPAIGN'S MANDATORY PROPOSAL

A. SUMMARY AND ISSUES

Table 5. Summary of Mandatory Campaign IZ Proposal

TOPIC	PROPOSAL	ISSUES
PROJECT THRESHOLD SIZE	10 or more newly constructed or substantially rehabilitated units. Applies to. • Contiguous and Phased construction aggregating to 10+ units • Developments by same developer that are divided by alley but aggregate to 10+ within two years.	---
TARGET AREAS	• Same 23 Metro stations, HOAs, DOAs and STAs as OP proposal. • The Downtown Development District (DD), after January, 2008 • All District-owned or NCRC-owned Land on which privately developed residential construction is proposed • All Residential Projects Applying for FAR Increases Please note that some HOA's and DOA's hand neighborhoods have been modified or eliminated with the permission of the Campaign, as these areas have already been developed since the last Comprehensive Plan	OP's target areas based on Campaign's initial submission. The Campaign has worked with OP to include only those Metro station areas, and HOA's and DOA's where increased density may be possible under the Comprehensive Plan land use map. However, the map is advisory, other goals and policies may supersede the map. It will be necessary to examine individual areas in greater detail as part of the hearing process. Because the zoning regulations already permit residential developments in the DD to achieve the maximum density permissible under the Height Act, the inclusion of the DD would require that the land market adjust within a less than three-year period to what amounts to a 12% decrease in the square footage that could be devoted to market-rate units.
AFFORDABLE SET-ASIDES	15% of Residential GFA for New Low-Rise Buildings. 12 % of Residential GFA for Mid-Rise and High-Rise Buildings 7.5% of Residential GFA for Substantial Rehabilitation Projects	The Zoning Regulations contain several definitions of substantial rehabilitation. This reference needs to be better defined. Conversions are covered, but the % applying needs to be defined. OP believes it is appropriate to measure gfa rather than number of units.
INCENTIVES /	Up to 20% increase over base density,	OP will work with DDOT after setdown to

COMPENSATIONS	height & area, as limited by Height Act, and where otherwise not infeasible	project likely density increases and assess their impacts on traffic and parking, and with other agencies such as the DCPS and WASA to examine other impacts
TARGET INCOMES	50% of set-aside @ 80% AMI 50% of set-aside @ 50% AMI	There are administrative and enforcement difficulties for both the government and for owners & developers in having different %'s of AMI for inclusionary units within the same project. It may be preferable to have one % of AMI for ownership units and one % of AMI for rental units.
DEVELOPMENT STANDARDS	<u>Unit Types</u> No less than same average # of bedrooms as market-rate units; higher percentage of IZ units permitted with more bedrooms than market rate. <u>Unit Sizes</u> Studio 450 sf, 1 BR 600 sf, 2 BR 850 sf, 3 BR 1050 sf, 4 BR 1120 sf <u>Unit Distribution:</u> Reasonably disbursed throughout project <u>Exterior Finishes:</u> same as market <u>Interior Finishes:</u> may vary from mkt.	The development community has suggested that it would be difficult to design smaller inclusionary units than market rate units, especially for high-rise buildings, because framing requirements are generally uniform for building tiers. OP notes that there are often different gfa's for the same unit type within projects and does not believe this will be a problem. It may be reasonable for inclusionary units to be not located on the top two floors of a high-rise structure because of the premium rates those floors command.
PRICING METHODOLOGY	Mayor sets rents and prices annually based on HUD-established AMI so units are affordable to low & mod households, not to exceed 30% gross income	The Zoning Commission cannot direct the mayor to do this. Such regulations would most likely involve DHCD, which requires authority from the City Council
CONTROL PERIOD	Rental 50 years Ownership: 20 yrs. Renewable for 20 years when sold in less than 20 years	Most other jurisdictions' IZ programs specify 1- to 15 years for control of ownership units, in order to promote equity accumulation for objectives such as financing college educations.
RECAPTURE OF FOR-SALE UNITS	Before 20 yrs : Owner receives purchase price + CPI + basis improvements After 20 yrs: Owner receives ½ profits; Housing Production Trust Fund (HPTF) receives ½	As noted above, other jurisdictions have shorter control periods Only the Council can specify/authorize contributions to the HPTF
SUBMISSION REQUIREMENTS	Submit site plans or plats to mayor identifying: Number of inclusionary units Location of inclusionary units within project Size of each inclusionary unit Pricing of each inclusionary unit Schedule for completion of inclusionary units	
PROJECT PLAN APPROVAL	Mayoral review and certification of plans'. Compliance Approval of alternative means of	Campaign realizes that this will likely be delegated to OP, ZA and BZA. However, if DHCD is to be involved in compliance,

	compliance Approval of warver from requirements.	some Council action may be necessary.
RELIEF FROM REQUIREMENTS	Partial Relief. Hardship variance determined by mayor (BZA) (e.g., high, non-severable condo fees; historic preservation; etc.)	
	If Hardship, Requirement Can be Met By: Off Site Units: similar in size/number as on-site	
	Buyout Contribution to HPTF: ~~Rental~~ : 20 yrs of market minus affordable rent ~~For-Sale~~ : market minus affordable price	Only Council can authorize contributions to HPTF
	Full Relief: Mayor (BZA) determines that compliance deprives applicant of <i>all</i> economic use of property	
	Enforcement of Relief Requirements Development project gets \$100,000 lien per off-site IZ unit until off-site has affordable units has its certificate of occupancy	These fines significantly exceed the schedule of fines authorized by Council and would need Council action
	Caveat: Failure of BZA to approve parking relief is not grounds for relief from IZ	
APPLICANT POOL	Priorities: - 1 st priority to DC residents - 2 nd priority to those employed in DC - Must Be Primary residence - Must have not owned home in DC for past 5 years	
	Financial Status: Mortgage or rental credit qualifiable	
	Public Purchase Option: DCHA & non-profit housing providers have right of 1 st refusal for 40% of affordable units, and for purchase of units sold before 20 yr control ends	
ADMINISTRATION	<u>Selection</u> : Mayor establishes, brokers and runs lottery <u>Continuation</u> : Re-certification every 2 years	This has significant administrative requirements
CONTINUING RENTER/OWNER ELIGIBILITY	<u>Rental</u> : Annual income-certification Must move @ lease-end if income exceeds eligibility <u>For-Sale</u> : Primary residence Income may increase <u>Both</u> (Sub) Lease w/mayoral permission	Significant administrative requirements. Rental requirement to move may conflict with other DC laws and federal programs.
ONGOING ADMINISTRATION	<u>Developers</u> : Detailed annual reports to Mayor <u>Renters</u> : Annual income re-certification to	See detailed list of administrative requirements (attached). Many of these requirements are beyond the authority of the Zoning Commission.

	Mayor Mayor: Brokering of applicant pool Extensive administration Detailed Annual Report	
--	---	--

B. ANALYSIS OF CAMPAIGN'S MANDATORY PROPOSAL

1) Does the Zoning Commission Have Authority to Consider the Proposal?

Yes. The proposal is firmly rooted in the housing goal of the Comprehensive Plan, is geographically limited to areas that, appear to provide adequate access and services, as required by the Comprehensive Plan. The proposal includes mechanisms for compensating property owners or developers for the requirements. These include partial relief through the Mayor or the BZA, provisions for off-site affordable housing, and the possibility of demonstrating the practical difficulty in meeting the requirements for reasons inherent in the property itself, or due to other government regulations. For the Downtown Development District, where no bonus-density compensation is possible, the proposal provides for an implicit 2 ½ year land price adjustment period.

2) Is the Proposal Not Inconsistent With the Comprehensive Plan?

Generally, it is not inconsistent with the Comprehensive Plan. The proposal has focused on requiring inclusionary units and accommodating density in areas of the city with adequate transit and other services – particularly Metrorail station areas. There are a few areas where granting bonus density does not seem to be supported by the generalized land use map, but where other written elements, or designations on the policies map of the Comprehensive Plan do support such increases in density.

3) What is the Relationship of the Proposal to the Existing Zoning Regulations?

The Mandatory proposal is framed as if an overlay. It is actually both a map amendment that defines a physically specifiable geographic overlay area, as well as a text amendment that applies District-wide for projects of 10 or more units that seek zoning relief or apply for a PUD.

- a) Relationship to the PUD Mechanism: In requiring inclusionary housing for every development with 10 or more units, the proposal would remove most inclusionary housing proposals in the affected areas from being considered as amenities for PUDs. Unless the number of workforce housing or other affordable housing units exceeded the percentages required for the overall project, such housing would have become a requirement, not an amenity.

OP has traditionally encouraged PUD applications for significant developments that require a map change to accommodate requested density. One benefit of this has been that many large developments have become subject to design review, impact analysis, and neighborhood input. The Campaign's proposal is silent on whether the affordable housing requirements would supersede PUD or map change requirements.

b) Existing Affordable Housing and Other Housing Incentive Overlay Districts

Reed Cooke: The underlying zoning in this overlay is R-5-B and C-2-B. The overlay permits the addition of 10 feet (typically one floor) of residential construction, provided 50% of the bonus density is affordable. Assuming that the R-5-B fifty foot height will typically accommodate 5 floors in that neighborhood, where ceiling heights are typically higher than in downtown, the addition of one floor where the lot occupancy is 50% and the FAR is 1.8 will result in an increase in .38 FAR – the equivalent of a 21.5% bonus density increase in FAR. The Campaign's proposal would provide for approximately the same increase in density – up to 20%. However, the Campaign's inclusionary requirements are much stricter than the Reed-Cooke overlay's. Reed-Cooke requires 1 sf of affordable housing for every 1 sf of bonus density. Again, using the same number of floor assumptions as above, the affordability square footage requirement is 8.5% of an entire project, and at up to 95% of AMI. The Campaign's proposal requires 15% of the project to be affordable at between 50% and 80% of AMI.

The relative priorities of the Reed-Cooke overlay and the Campaign's proposals will need to be clarified for a public hearing.

Uptown Arts: This overlay has an affordable housing incentive bonus of 3 sf of bonus density for each 1 sf of affordable housing. However, it has never been used because the combination of other incentives for retail and arts uses has enabled developers to gain bonus density without providing affordable housing. Because most of the Uptown Arts district is also within an historic district, there have sometimes been other restrictions limiting the ability to use bonus density.

If affordable housing is required in the Uptown Arts district, the current situation may be somewhat reversed. It may be possible that the combination of bonus density from affordable housing and the possible limitations on density due to historic preservation objectives may result in some optional retail or arts uses not being provided. This will need to be examined further before a public hearing. The relative priorities of the Uptown Arts Overlay and the Campaign's proposals will also need to be clarified.

Capital Gateway The newly established overlay district provides for 1.0 additional FAR in certain underlying zones, provided that FAR is used for residential properties. There is no affordability requirement. The economic impact of an inclusionary zoning requirement in this overlay will need to be explored.

Downtown Development District: The DD provides significant incentives for residential construction. There are no affordability requirements unless a portion of the housing required within the zone is constructed off-site. If so, there must be construction of affordable housing either directly, or through partnership with a non-profit housing provider. Alternatively, the City Council has permitted a contribution to the Housing Production Trust Fund. OP uses 10 to 10.5 FAR as an approximation for what can be developed in the DD if all floors, or all floors above the ground level, are residential. Because residential buildings in the DD are already permitted the maximum possible FAR consistent with the 1910 Height Act, the 15% affordability requirements would most likely result in the following:

- For property that has not been sold recently, be absorbed through adjustments to land values, or;
 - For property that has had recent turnover, require what would currently be matter-of-right development to seek zoning relief and demonstrate that the affordability requirements cannot be met.
- c) TDR Receiving Zones - The Campaign's proposal has not addressed how the inclusionary requirements would apply in Transfer Development Rights (TDR) Receiving Zones and how additional density would be achieved to help balance the affordability requirement. The Campaign's additional density is intended to be additive to the base zone. However, in TDR receiving zones, land owners have already purchased, or have the right to purchase, development rights that permit their property to be built to the maximum envelope allowed by the Zoning Regulations and the Height Act of 1910. No additional density could be accommodated without the Regulations being amended to permit the lifting of lot occupancy and FAR requirements, as the Zoning Commission did in 2002 for residential buildings in the Downtown Development District (DD).

Issues in the TDR receiving zones are similar to those in the DD; except for the TDR receiving zones there is still the possibility of the Zoning Commission's amending the Zoning Regulations to permit additional density. Otherwise, the 15% affordability requirements would likely be:

- Absorbed through property value adjustments, or;

- Prompt the filing for zoning relief from inclusionary housing requirements for developments that would otherwise be matter-of-right.
- Change the economic balance of zone districts like C-3-C such that housing, whether market rate or affordable, is no longer an attractive option to developers, even with TDRs.

If this proposal is set down, OP will explore how much additional density could be achieved by loosening restrictions on lot occupancy and density in TDR receiving zones.

4) Are There Other Legal Issues Relating to the Zoning Commission?

The Office of Planning has discussed the Mandatory Inclusionary Zoning proposal with the Office of the Attorney General (OAG). The OAG's primary concern is that the proposal authorizes or directs the Mayor to do certain things, the authority for which is actually reserved to the City Council or is in conflict with or duplicative of other laws. The specific concerns are outlined separately by the OAG.

5) Economic Issues:

The Office of Planning will test the Campaign's proposal through an economic model that includes four scenarios common to the District:

- a) A high-density, steel and concrete frame apartment of 200 units.
- b) A high-density, steel and concrete frame condominium of 150 units.
- c) A low-density wood frame apartment of 25 units.
- d) A low-density wood frame condominium of 25 units.

These project's economics are sufficiently different that they should be tested to determine the impact of not only the affordability requirements but also the incentives. Developers consider it vital to test a scenario where the requirements would force a structure from wood frame to steel and concrete. They argued that there is a significant change to costs with little improvement to revenue.

Techniques will include both a residual land value analysis and cash flow pro-forma.

6) Land Use Issues:

- a) *Identifying Where Bonus Density is Possible and Desirable*

The Mandatory proposal has followed the guidance of the Comprehensive Plan's housing goal, by identifying areas that are well served by transit or have been otherwise identified as areas suitable for growth. The Campaign

has worked with OP to adjust the areas to reflect changes on the ground since the Comprehensive Plan, and has shown flexibility in exploring whether to eliminate areas that some elements of the Comprehensive Plan may indicate are suitable for increased density, but the Generalized Land Use Map does not.

OP has taken the areas listed in the Campaign's proposal and made the following adjustments to determine the portion of the city that might be covered.

- All Metro stops included in the Campaign's proposals are included, as well as a ½ mile radius around them. The ½ mile radius was chosen as a standard walking distance for transit oriented development;
- DOAs and HOAs listed by the Campaign, and a ¼ mile radius around the point on the Generalized Land Use Policies Map where these areas have been located, have been included, with the following exceptions:
 - Whitehaven Woods
 - Blitz Properties
 - Congress Park
 - Wheeler Heights Estate
 - Parkside
 - Washington Highlands

These were eliminated because the contemplated projects have been built or are in the process of being built.

The ¼ mile radius was chosen to reflect that not all of these areas are necessarily Metro stop areas. DOA and HOA boundaries have been made more specific where the justified by the Comprehensive Plan or subsequent planning actions.

- The STAs listed by the Campaign are included, with the boundaries shown on the land use policies map;
- The neighborhoods listed by the Campaign have been included. The areas have been determined by including a ¼ mile radius around the neighborhood point shown on OP maps, unless OP and the campaign have discussed and agreed to more specific boundaries.
- For all of the above, R-1 and R-2 zone districts were eliminated, as well as federal government land other than St. Elizabeth's STA. The

Campaign has agreed that the inclusionary zoning proposal is not intended to target areas zoned for single-family houses.

The sum of these general areas are shown on Map 1. The purple (R-1), red (R-2) and green (federal) areas are shown on the map, but have not been included within the overlay. Based on the above, approximately 12 ½ square miles of gross land area of the District would be covered by the fixed area of the proposed overlay. Other areas would be affected by requests for zoning relief on projects with 10 or more residential units.

This overlay's gross area equals approximately 20% of the District's land area.

From this area, several deductions need to be made to assess the actual area that would be covered:

- Approximately 25% of that area is devoted to streets and sidewalks;
- Areas where the Zoning Commission may determine that the Comprehensive Plans written elements or generalized land use policies map make the areas inappropriate for the granting of additional density;
- Historic districts (shown in green cross-hatching on Map 3) will reduce the ability of land to receive increased density.
- TDR receiving zones and the DD may be unable to receive additional density and may be eligible for relief.
- Most of the land is already developed to over 40% of the maximum density permitted by zoning. This is a standard percentage used to assess whether land is likely to be considered underdeveloped and therefore likely to be re-developed.
- In most areas of the District underdeveloped land occurs in small parcels where it would be somewhat difficult to assemble parcels large enough for developments of 10 or more residential units.

b) *Accounting for single-family neighborhoods in areas where they are inconsistent with the Generalized Land Use Map.*

There are some significant discrepancies between Generalized Land Use Map designations and existing land uses. This is particularly true for some parts of Ward 7, where the development pattern is comparable to R-1 and R-2 zone districts, but where the zoning is R-5 and the Generalized Land Use Map designation is Medium Density Residential. Although the practical impact of the proposal may be insignificant on these areas of single family homes because of the difficulty of assembling enough land to trigger the

inclusionary zoning requirement, it still creates the impression of giving incentives for greater density in single family home areas.

c) *Identifying Areas for Possible Off-Site Fulfillment of Mandatory Requirement*

The proposal permits partial relief from the IZ requirements if the inclusionary housing is constructed off-site. In order to promote the de-concentration of poverty objective of an IZ program, OP recommends that if such off-site housing is built, it be built within ½ mile or within the same ANC as the market rate project.

7) Impact Assessment

a) *How Many Units of Inclusionary Housing Would Be Created by the Program?*

OP has estimated that if Inclusionary Zoning had been enacted in the city since 2000 that roughly 778 units of affordable housing might have been created. This was calculated by first removing the market rate projects where IZ would not have applied, such as the Downtown Development District, where maximum density is already permitted as a matter of right. A 15% affordability requirement was applied to the 3,040 remaining units of market new construction or 456 affordable units. A 7.5% affordability requirement was applied to the 1,325 units rehabilitated equaling 100 units. Finally a 20% bonus was applied to completed affordable projects that could have received the bonus density. This yielded a total of 778 units of affordable housing. No bonus was applied to affordable renovation projects completed since 2000 because they are typically already 100% affordable.

If the Mandatory proposal is set down OP will work with the Campaign to draw firm boundaries for the Squares to be covered, assess the potential for build out from the existing base of development, and then add the up-to-20% density increases to determine the general scale of potential population growth in these areas, and the number of persons that could be served by the IZ program.

b) *What are the Impacts of Bonus Density on Traffic, Parking, Schools, Water, etc?*

If the proposal is set down, OP will work with the District Department of Transportation to assess the possible impact on traffic and parking. The assessment will include:

- The Square footage of existing development in areas where bonus density would be permitted.

- Projected full build-out of vacant and underutilized parcels in areas where bonus density would be permitted, and all commercially parcels within ½ mile of the appropriate Metro stations, within ¼ mile of the appropriate DOA's HOA's, or within the appropriate
- Special Treatment Areas with an addition of 20% bonus density.
- General assessment of road and transit capacity within the areas noted above, including levels of service at key intersections;
- Assessment of modal split, and projected roadway and transit levels of service at the above noted full build out and 20% bonus scenarios;
- Assessment of parking capacity for the above scenarios.

OP will also work with agencies such as DCPS and WASA to assess the impact on other infrastructure and service capacity.

c) The need to achieve design compatibility.

Most sites on which housing is now being built are in-fill sites. The advantage of doing inclusionary zoning as part of a PUD process is that the Zoning Commission can review the design of the proposed project carefully to be sure that it fits in with the character of the surrounding neighborhood. For example, in the first PUD that proffered below-market housing, the Washington Clinic site in Friendship Heights, OP worked with the developer to take advantage of the flexibility in the PUD process, concentrating the height and density on the west side of the site, adjacent to Western Avenue, and immediately across from a 130 foot building on top of the Metro station. The part next to the single-family houses was left as open space. In addition, the developer was required to do a traffic study to prove that the additional density would not have an adverse impact on local traffic, provide certain signalization improvements, etc. This type of design accommodation and protection from adverse impacts on the neighborhood, which is based upon the review of the Zoning Commission, would not be possible in the Campaign's proposal, which provides extra density without any requirements that the design "fit" into the neighborhood, and without any design review.

8) Administrative Issues:

As was noted above under legal issues, the Campaign's proposal has the Zoning Commission assign duties to the Mayor that are not within the Commission's authority to assign. It also requires certain things of District agencies that are only within the City Council's authority to assign, or that are reserved to the Commission or the Board of Zoning Adjustment. The specific assignments the Campaign's proposal gives to the Mayor are listed in Attachment 7. The OAG's comments on the permissibility of these assignments are included in a separate memo to the Commission.

VIII. THE OFFICE OF PLANNING INCENTIVE-BASED PROPOSAL

A. SUMMARY

Table 5. Summary of OP Voluntary IZ Proposal

TOPIC	PROPOSAL
PROJECT THRESHOLD SIZE	10 UNITS
TARGET AREAS	The Target Areas to be considered for (an) Inclusionary Housing Overlay Zone(s) include: <u>Metro Station Areas</u> – Defined as full Squares that are within a one-half mile radius from station. R-1 and R-2 Zones not included. <u>Housing Opportunity Areas</u> – Defined as full Squares within one-quarter mile radius from Comprehensive Plan Generalized Land Use Map designation, unless otherwise specified in Comprehensive Plan text. R-1- and R-2 zones excluded <u>Development Opportunity Areas</u>. Defined as full Squares within one-quarter mile radius from Comprehensive Plan Land Use Policies Map designation, unless otherwise specified in Comprehensive Plan text. R-1- and R-2 zones excluded <u>Special Treatment Areas</u> – As defined by the Comprehensive Plan <u>TDR Receiving Zones</u>: TDR receiving areas outside of the above boundaries may be considered. The above boundaries of the target areas are generalized. Areas would need to be studied individually for carrying capacity, etc. Definition by Square or, in some cases, Square and Lot would likely be needed. The proposed regulations would also provide a mechanism for considering increasing in density or other incentives outside of the above areas, within the context of a PUD or a PUD-like process.
RATIO OF INCLUSIONARY TO BONUS MARKET RATE UNITS	This requires additional study and testing. There may be different ratios for different Inclusionary Housing Overlays (IHOs). The percentage of inclusionary units to bonus gfa is not likely to be less than: 50% of bonus gfa in districts with FAR limits (1sf:1sf ratio in R-5 and above, and all commercial and mixed use zone districts) 50% of bonus units in R-1 through R-4 districts (R-1 & R-2 require PUD based on <u>minimum property size</u>).
INCENTIVES/	Several types of incentives are likely to be appropriate. These may include: <u>Bonus Density Increases</u> These increases over base densities may need to vary by IHO to provide sufficient incentive This will need additional study. If bonus density increases do not provide sufficient density, the following types of incentives may be appropriate, subject to OP's providing advisory site plan review to the Zoning Administrator

	Lifting of Certain Physical Restrictions on Development. For example. Reduction of residential recreation space requirements; <u>Increased Density in Areas such as TDR Receiving Zones:</u> OP will explore the implications of permitting buildings that are all-residential above the first floor, and that have purchased as many TDRs as possible, to be constrained only by: The maximum FAR physically feasible within the limits of the Height Act of 1910, and The lot occupancy requirements of the Zoning Regulations; Reduction in Loading Requirements Relief from Yard and Court Requirements Expedited Review Process (See below).
TARGET HOUSEHOLDS	<u>Income:</u> Several studies across the country have indicated that inclusionary zoning programs are most effective if targeted to workforce housing, rather than low-income housing. The following types of income ranges may be appropriate. Rental: HUD Section 8 Low Income (65% of AMI), adjusted by family size For-Sale: 80% AMI, adjusted by family size These target incomes are subject to additional study and may require minor changes to make them consistent with existing programs, for ease of administration. Other Factors:
DEVELOPMENT STANDARDS	<u>Unit Types:</u> Should reflect the range and type of units in the overall project. The inclusionary units should average at least the same number of bedrooms as the market rate units, and could have a proportionately greater number of bedrooms than the market rate average. <u>Units Sizes:</u> Within each unit type, it may be desirable to permit the average square footage of the inclusionary units to be less than for market rate units, as long as prescribed minimum standards were met. The legal implications of such variations will require additional study. <u>Unit Distribution:</u> Typically jurisdictions require inclusionary units to be evenly distributed vertically and horizontally throughout all buildings and/or phases of a project. There are restrictions on the percentage of inclusionary units on a floor (typically no more than 40%) However, additional consideration is needed of whether it may be appropriate to permit inclusionary units to be disproportionately stacked in particular building tiers, or less than proportionately represented on the upper stories of high rise buildings <u>Exterior Finishes:</u> should be indistinguishable from market rate units <u>Interior Finishes and Appliances:</u> Whether and how to permit variations for the inclusionary units will require additional study.

TARGET CLIENTS / HOUSEHOLD STANDARDS	It is clear that households should: Be purchasing or renting their primary residence; Commit to continuous occupancy per the lease terms or deed covenants; Qualify for any necessary mortgage financing and down payment, and Be certified as income eligible before applying to purchase or rent an inclusionary unit. It is not as clear whether a program should preclude an applicant from having owned other housing within a specified time period as long as the applicant currently meets all program requirements															
PRICING METHODOLOGY	<u>Initial Housing Cost:</u> Should be determined by the District government based on the following assumptions. Monthly housing payment should equal 30% of the Income Limits by family size and unit type. <table><tr><td>Unit Type</td><td>Household Size</td><td>2004 Income Limit</td></tr><tr><td>Studio/Efficiency</td><td>1 Person Household</td><td>\$47,800</td></tr><tr><td>1-Bedroom</td><td>2 Person Household</td><td>\$54,650</td></tr><tr><td>2-Bedroom</td><td>3 Person Household</td><td>\$61,450</td></tr><tr><td>3-Bedroom</td><td>5 Person Household</td><td>\$73,750</td></tr></table> Purchase assumptions would likely include: • 5% Down payment; • Monthly housing payment includes principal, interest, taxes, insurance and at least a portion of the standard condo or home association fees. Achieving a separate schedule of condo fees for affordable unit purchasers may be difficult, • 30 year term, • Current national average interest rate determined by FreddieMac weekly survey of mortgage (see www.freddiemac.com). • Rental assumptions would include. • Increase in rents based on Consumer Price Index. • The housing payment would not include utility allowance. <u>Final Housing Cost.</u> Would be determined prior to marketing of the affordable units using current information for the same assumptions above. <u>Public Purchase Option:</u> It may be appropriate for the District Government &/or non-profit housing providers to have right of 1st refusal for a specified percentage 20% of the affordable units, and for purchase of units sold before 10 yr control ends. Mixing affordable rentals into otherwise for-sale buildings would be difficult.	Unit Type	Household Size	2004 Income Limit	Studio/Efficiency	1 Person Household	\$47,800	1-Bedroom	2 Person Household	\$54,650	2-Bedroom	3 Person Household	\$61,450	3-Bedroom	5 Person Household	\$73,750
Unit Type	Household Size	2004 Income Limit														
Studio/Efficiency	1 Person Household	\$47,800														
1-Bedroom	2 Person Household	\$54,650														
2-Bedroom	3 Person Household	\$61,450														
3-Bedroom	5 Person Household	\$73,750														
OCCUPANT SELECTION	The District Government would maintain a list of all qualified households															

	and would widely advertise the availability of IZ units widely within this list, and other lists of qualified affordable-housing households. The developer would be free to choose from among these eligible households.
CONTROL PERIOD	<u>Rental</u>: likely 30 or more years <u>Ownership</u>: likely 10 to 15 yrs; renewable for same period years when sold in less than the control period.
RESALE AND RECAPTURE OF FOR-SALE UNITS	<u>Resale During Control Period</u> – Deed restrictions, covenants or other legal means should restrict sale to an applicant pool similar to that for initial buyers, should limit the seller's recapture of the sales price to the initial cost, plus the cost of permanent (i.e., basis) improvements, the seller's closing costs and sales commission, plus an inflator such as the Consumer Price Index. If there were a profit balance it would be contributed to a fund designated by the District Government for the production of affordable housing. A sale within the affordability restriction period should create a new affordability restriction period of the same length <u>Resale After Control Period</u> - Upon the expiration of the restricted selling period, the then current owner of the Unit could sell the Unit at market rate without restriction on the pool of potential purchasers. The profit balance (see above) would be split between the seller and the affordable housing fund <u>Enforcement</u> Restrictive covenants would be active until the appropriate affordable housing fund receives the appropriate contribution from the sale of unit.
SUBMISSION REQUIREMENTS	At a minimum, an applicant would submit to DCRA and OP site plans or plats identifying - Number of Base Units - Number of Total Units - Number of inclusionary units - Location of inclusionary units within project - Size of each inclusionary unit - Estimated pricing of each inclusionary unit - Schedule for completion of inclusionary units
REVIEW AND APPROVAL PROCESS	Inclusionary housing projects should receive expedited treatment wherever possible, while still ensuring protection of the character of surrounding areas <u>Minimum Level Review</u> There could be administrative review of many projects, with OP providing comments to the Zoning Administrator, within a clear time frame. This might apply to projects that are seeking access to IHO bonus density within the height and lot occupancy constraints specified for that IHO zone. This process could include review of IHO compliance with procedures, and administrative site plan and massing review. It could be

	blended with the EISF process outside of the Central Employment Area. <u>Medium Level Review:</u> There might be more intensive review of some projects that seek to achieve IHO bonus density permitted for that zone by also seeking relief from the lot occupancy and/or height constraints specified for that IHO zone. Such review might be modeled on the Zoning Commission's campus plan review process, where projects are reviewed as consent calendar items under §3104.4, but may be required by the Commission to undergo full PUD processing. It may be appropriate to consider a waiver or reduction of PUD filing fees if full PUD review is required for an inclusionary housing project. <u>Comprehensive Review:</u> A full PUD-like process may be appropriate for IHO projects seeking density greater than that permitted within that IHO zone, or for projects that are outside of the IHOs and wish to produce workforce housing by availing themselves of the incentives contained within the inclusionary regulations
APPLICANT POOL	Priorities. - 1st priority to DC residents - 2nd priority to those employed in DC - Must Be Primary residence - Must have not owned home in DC for past 3 years (see note above)
DESIGN REVIEW	Projects undergoing minimum level review would not have any design review Projects undergoing medium level review may need to be reviewed for the impact that height of lot occupancy increases may have on neighborhood character. If so, it will be necessary to develop clear guidelines for height and massing review. Projects undergoing comprehensive review would be subject to design review similar to that for PUDs.
NEIGHBORHOOD / TRANSPORTATION & OTHER INFRASTRUCTURE ANALYSIS	For all projects at the minimum or medium review levels, this analysis would have been done during development of the IZ program before Zoning Commission consideration. For comprehensive review projects, the process would be similar to that for PUDs. None for program, or at individual project level until PUD review.
HISTORIC PRESERVATION IMPACT ANALYSIS	The HPRB process would apply as usual.

B. ANALYSIS OF INCENTIVE BASED CONCEPT

The heart of the voluntary concept is the economic model that enables the District to accurately estimate the amount of bonus density or other incentives that are needed to induce a developer to provide affordable housing in a given situation. OP has tested the model against accepted cost standards for different building scenarios. The results have been essentially the same as those provided by experienced housing developers who have been willing to share information with OP.

OP will be prepared to demonstrate this model in real time if a public hearing is scheduled on these concepts.

Setting down this concept will facilitate the start of public discussion of incentive-based inclusionary zoning in the District. The concept requires much of the same research and refinement as OP has noted is needed for the mandatory proposal.

IX. STAKEHOLDER COMMENTS

Development professionals and affordable housing advocates have had ongoing dialogue about the Campaign's Mandatory Proposal. The dialogue has been critical to fashioning the Office of Planning Mandatory Proposal, which OP believes reflects movement towards consensus on the part of several stakeholders.

Citizen groups have not yet reviewed the Mandatory proposal in detail. Mandatory advocates have made presentations to some ANCs and have secured support from at least 13 ANCs. This support has ranged from full to very qualified support. ANCs and other community groups have not had the opportunity to become familiar with either the Modified Mandatory or the Voluntary proposals.

X. AGENCY REFERRALS

Any proposal set down for a public hearing will be referred to the following District government agencies for review and comment:

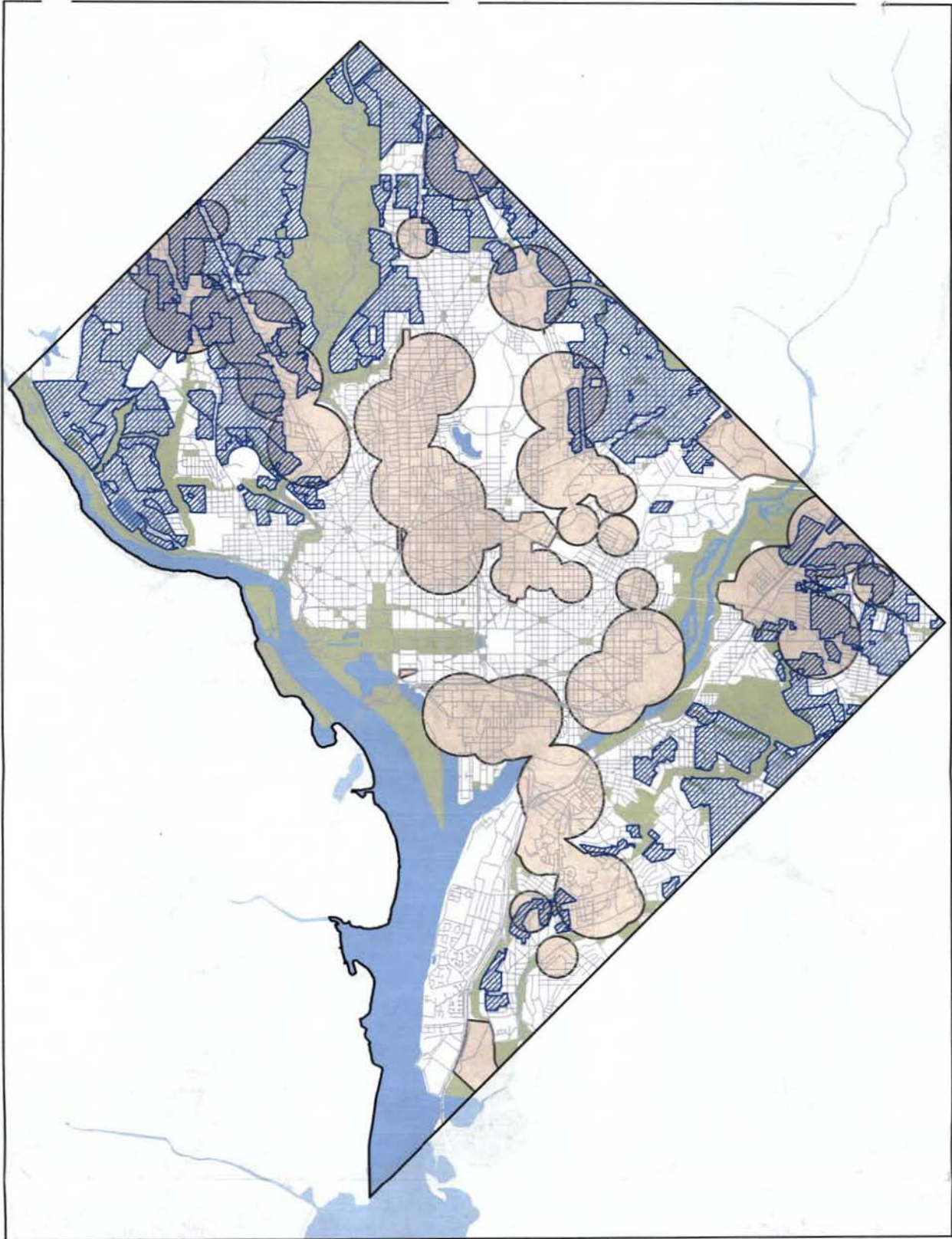
- Department of Consumer and Regulatory Affairs (DCRA)
- Department of Housing and Community Development
- District of Columbia Public Schools
- Department of Parks and Recreation;
- Department of Public Works (DPW);
- District Department of Transportation (DDOT);
- Environmental Health Administration;
- Fire and Emergency Medical Services Department;
- Metropolitan Police Department; and
- Water and Sewer Agency (WASA).

Because of the complexity of the issues, OP will take a proactive role in gathering agency input.

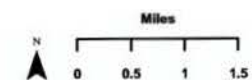
Emc/ar-slc

ATTACHMENT 5

INCLUSIONARY ZONING OVERLAY MAPS



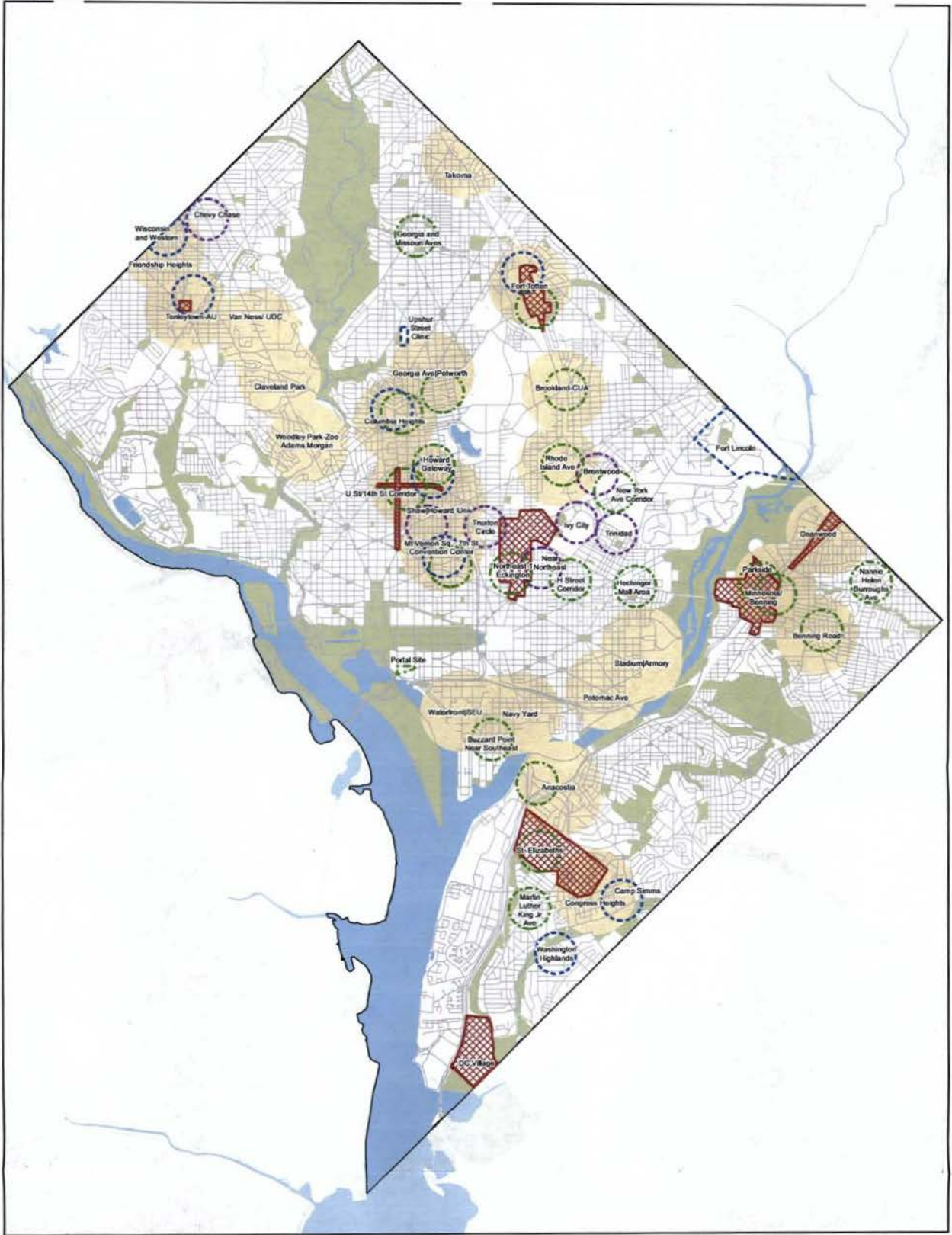
Map 4 - Inclusionary Zoning and Single Family Detached Zoning Districts



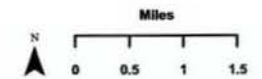
*** Government of the
District of Columbia
Anthony A. Williams, Mayor
Office of Planning - April 28, 2005

This map was created for planning
purposes from a variety of sources.
It is neither a survey nor a legal document.
Information provided by other agencies
should be verified with them where appropriate.

-  R1, R2 Zoning Districts
-  Proposed Areas Inclusionary Zoning
-  Water
-  Parks



Map 1 - Proposed Area Definitions



★ ★ ★ Government of the District of Columbia
 Anthony A. Williams, Mayor

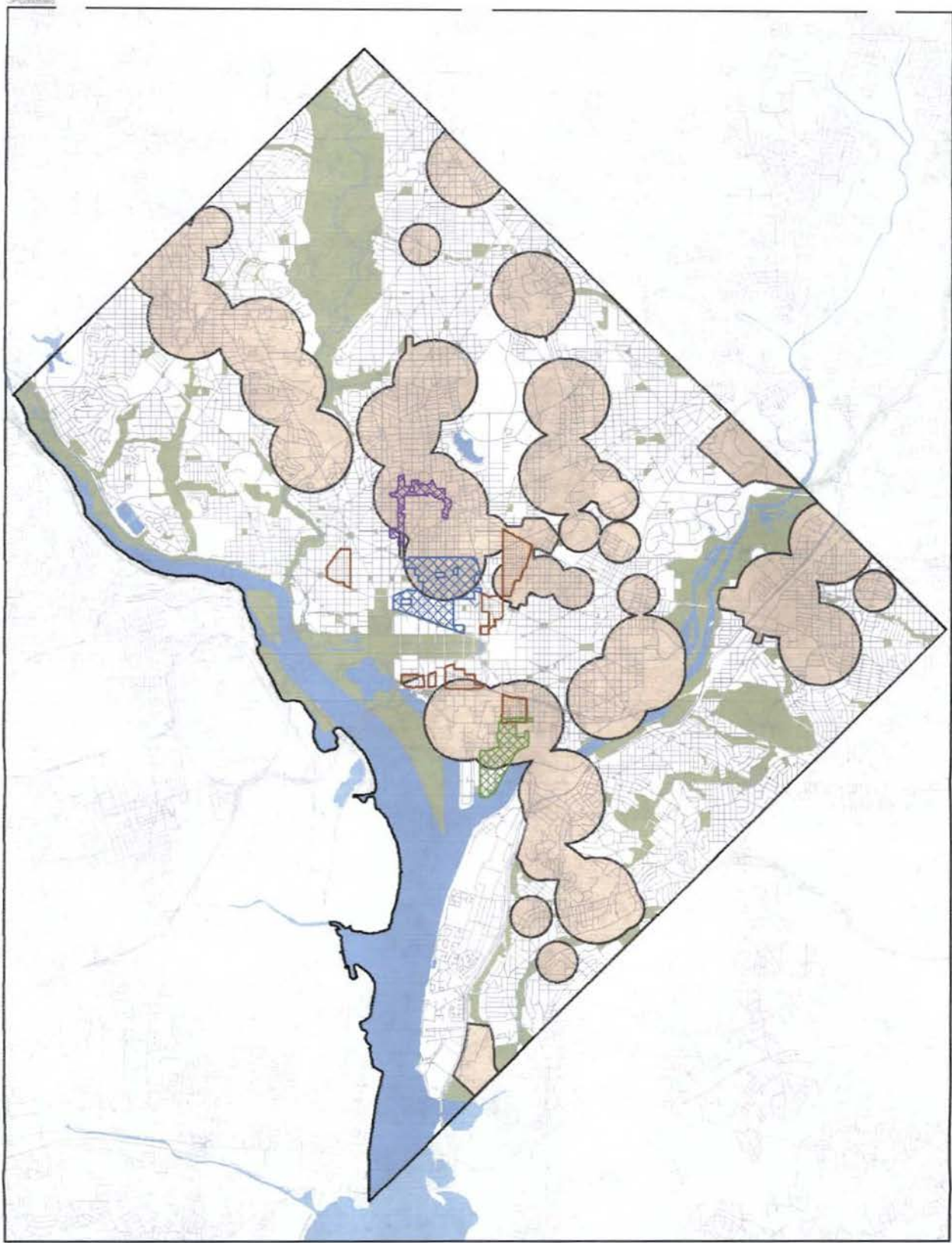
Office of Planning ~ April 28, 2005

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

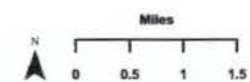
- Housing Opportunity Areas
- Development Opportunity Areas
- Campaign Suggested Neighborhood Areas

- Special Treatment Areas
- Metro Development Areas

- Water
- Parks



Map 2 - Inclusionary Zoning and Overlays with Density Bonuses

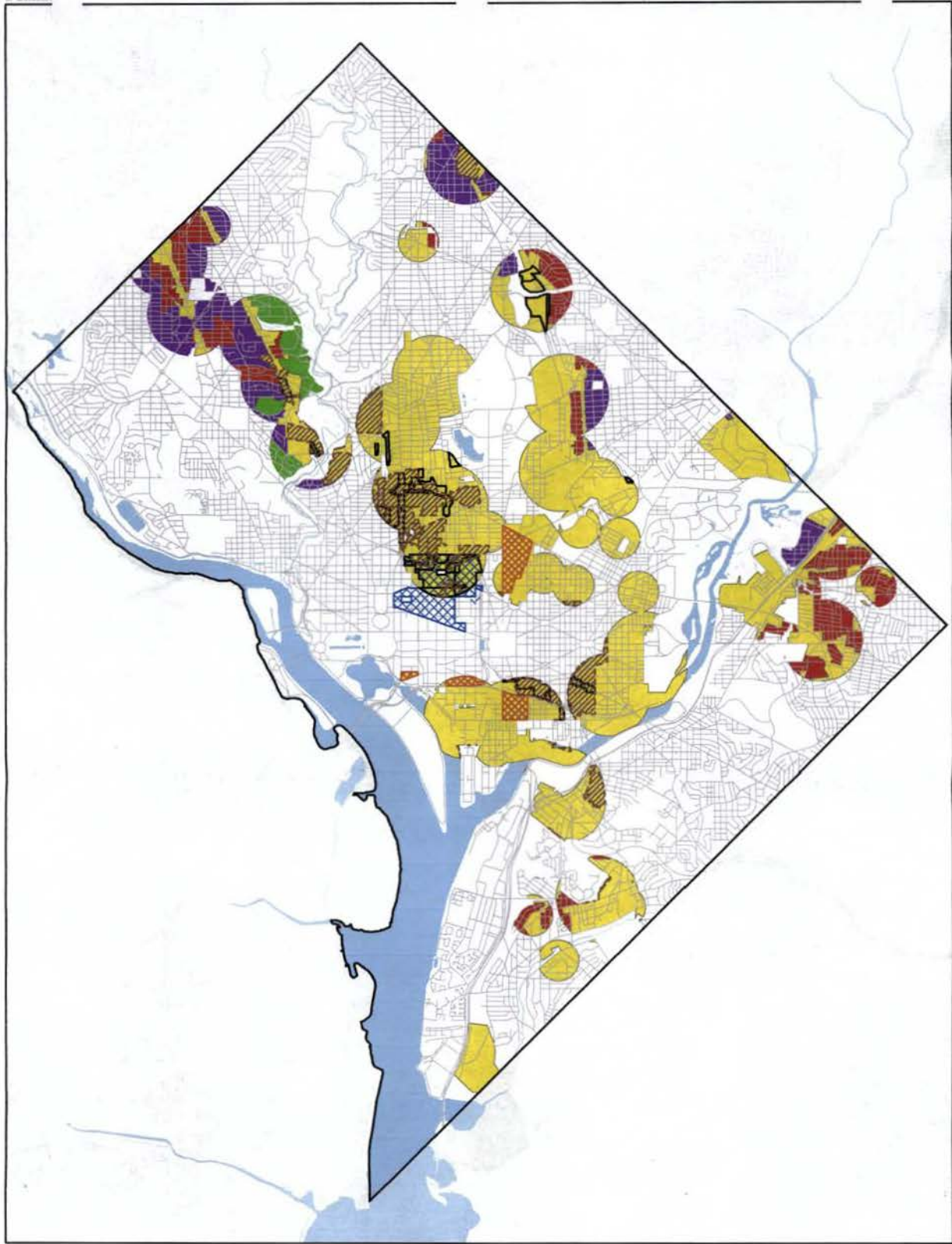


*** Government of the
District of Columbia
Anthony A. Williams, Mayor

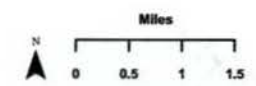
Office of Planning - April 28, 2005

This map was created for planning
purposes from a variety of sources.
It is neither a survey nor a legal document.
Information provided by other agencies
should be verified with them where appropriate.

-  Uptown Arts
-  Downtown Development District
-  Capitol Gateway
-  Transfer of Development Rights (TDR)
-  Proposed Areas Inclusionary Zoning
-  Water
-  Parks



Map 5 - Inclusionary Zoning: Proposed Coverage



*** Government of the District of Columbia
Anthony A. Williams, Mayor

Office of Planning - April 28, 2005

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Included Areas

- Inclusionary Zoning**
- Selected TDR Areas
- Selected Historic Districts
- Included Overlay Zones

Excluded Areas

- R-1-A
- R-1-B
- R-2

Included Only in Mandatory Proposal

- Downtown Development District

ZONING CONSISTENCY CHART

Adopted Comprehensive Plan Land Use Categories	Zone District
Residential Land Use Categories	
Low Density: Single-family detached and semi-detached housing are the predominant uses;	R-1, R-2
Moderate Density: Row houses and garden apartments are the predominant uses; may also include low density housing	R-3, R-5, R-5-A, R-5-B
Medium Density: Multiple unit housing and mid-rise apartment buildings are the predominant uses; may also include low and moderate density housing	R-5-, R-5-C
High Density: High-rise apartment buildings are the predominant uses; may also include, low, moderate and medium density housing.	R-5-D, R-5-E
Commercial Land Use Categories	
Low Density: Shopping and service areas that are generally low in scale, character and activity and that provide a limited range of retail goods and services are predominant uses.	C-1, C-2-A
Moderate Density: Shopping and service areas that generally provide a much broader range of goods are the predominant uses. Chain drug stores and grocery stores as well as branches of department stores, some specialty shops, and personal service establishments may be present.	C-2-A, C-2-B, C-3-A
Medium Density: Shopping and service areas that generally offer the largest concentration and variety of goods and services outside the Central Employment Area are the predominant uses. Most customers arrive by car, bus or subway.	C-3-A, C-3-B
Medium-High Density: Shopping and service areas that generally offer the largest concentration and variety of goods and services outside the Central Employment Area are the predominant uses. Most customers arrive at medium-high density commercial land use areas by car, bus or subway	C-3-B, C-3-C

High Density: The business and retail heart of the District and Metropolitan area includes a mix of employment, retail, office, cultural and entertainment centers.	C-3-C, C-4, C-5
Mixed Land Use Categories* + (Residential-Commercial)	
Low to Moderate Density Mixed Use	C-2-A, C-2-B
Moderate to Medium Density Mixed Use	C-2-B, C-3-A, C-3-B, W-1, W-2, SP-1
Medium to High Density Mixed Use	CR, C-2-C, W-3, SP-2
High Density Mixed Use – Central Employment Area	DD/C-2-C, DD/C-3-C, DD/C-4

Note: This chart must **NOT** be used as the sole determinant of zoning consistency with the Comprehensive Plan. It is a beginning point for analysis, which must include consideration of other planning designations and policies in the Comprehensive Plan as well as localized study of the area or property being reviewed for zoning consistency.

Overlay zones are not included as they apply to specialized situations and locations. Note that an overlay zone may modify the base zone or zones by means of either restrictions, incentives or a combination of the two. An overlay may thus affect the preliminary classification system presented above.

*There are a few locations where institutional PTE and open space uses are part of a mixed use designation. These locations will have to be judged individually.

+There are subcategories of commercial-residential mixes within most of these mixed use categories, e.g., moderate residential with medium commercial, medium commercial with moderate residential, etc. Thus the specific mix indicated for the location will be considered in determining the recommended zone district, taking all other factors into account.

**INCLUSIONARY ZONING:
ADMINISTRATIVE RESPONSIBILITIES IN MANDATORY PROPOSAL**

(Numbers in parentheses refer to Sections within Campaign's proposed Zoning Amendments)

The Mayor shall:

Review and certify prior to building permits, that applications (§§03.11, 03.12):

- meet IZ requirements
- have been granted, by mayor, permission to use off-site or housing production fund contribution alternatives
- have received, from mayor, waiver from requirements

Determine, within net 45 days, if application shall be granted for meeting IZ obligations thru options other than on-site construction and publish determination in DC Register. Options include:

- Off-site construction or contribution to HPTF if mayor determines that applicant has demonstrated on-site IZ requirements pose significant hardship (§04.3 includes criteria)
- Up to complete waiver if mayor determines that applicant has demonstrated that compliance would deprive applicant of all economically viable use of property

Give notice of program (§05.3)

Accept applications (§05.3)

Determine eligibility and creditworthiness (§05.3)

Compile and maintain list of qualified purchasers and tenants (§05.3)

Oversee re-certification of applicant eligibility every two years (§05.4)

Hold buyer/renter lottery for every qualifying affordable project (§§05.5 and 08.9)

Determine, within 30 days of application whether tenant meets criteria for sub-leasing of rental unit (§06.4)

Receive and compile, annually, tenant continuing eligibility re-certifications forms (06.5)

Receive, annually, individual developer inventories, provided under oath, of vacant and leased affordable unit inventory, including information on project, unit size and type, tenant names income and rent, included parking ,etc.. (§06.9)

Receive purchaser's certification of primary residence, on mayoral approved form (§07.2)

(May) enforce primary residency requirement by forcing owner to sell to eligible affordable purchaser (§07.3)

Within 30 days of application, issue determination of whether owner may temporarily rent-out unit.(§7.4)

Regulate and monitor sale/lease of all IZ units (§08.1)

- Within 5 days of receipt of notice of IZ unit availability from developer, notify DCHA and qualified non-profits of availability of IZ units.(§§ 08.5 and 08.4)
- Give DCHA or non-profits 60 days to notify mayor of intent to purchase IZ units (§§08.6 and 08.7)
- Determine eligible occupants for a project by lottery
- If necessary, hold a lottery among eligible IZ program registrants possessing a Housing Choice Voucher. IZ units shall be rented to this group if DCHA or non-profits do not exercise their 40% option under §08.6 (§08.11)
- Provide form for prospective purchaser or renter certificate of disclosure regarding deed restrictions, restrictive covenants and liens (§09.10)

Make annual report to Zoning Commission detailing:

- # units at 50% and at 80%
- # for-sale units
- average income of affordable households
- # units lost through expiration of units' control period
- # units purchased by DCHA or authorized non-profit
- value of DCHA subsidy, if any, towards rental or purchase of IZ-related affordable units
- average sales price or rental price, related to # of bedrooms
- # requests for alternative (off-site of HPTG) compliance or relief
- # requests granted
- # off-site units constructed
- amt'\$\$'s generated for HPTH (§10.2)

Review and approval of all restrictive instruments, if necessary (§10.3):

Ensure execution of contractual arrangements and other necessary compliance documents prior to issuance of building permit or C of O (§10.4)

Impose sanctions for developer non-compliance with IZ program, including

- Withholding of plat or plan recording
- Withholding or revocation of building permits
- Issuance of Stop Work orders
- Withholding or revocation of C's of O (§11.1); or
- Denial, suspension or revocation of any permit or other development approval (§11.3)
- Ensure that no building permit for any project is issued to a developer who failed to comply with a mayorally approved developer request for off-site, HPTF contribution or other alternative means of meeting IZ requirements of chapter (§11.6)

Ensure an Efficient Method of Administration and Enforcement

Determine Budget and Staffing Costs to District and to Housing Providers

TOPIC	OP NEGOTIATED CONCEPT	CAMPAIGN'S CONCEPT	VOLUNTARY CONCEPT	CONSIDERATIONS
	(HPTF) <u>Enforcement</u> Restrictive covenants	the other ½.		
SUBMISSION REQUIRE-MENTS	Similar to mandatory proposal, with site plan required, as well as massing diagram	Submit site plans or plats to mayor identifying number, location, size, pricing and completion of IZ units	At a minimum, similar to modified proposal	Commission cannot specify mayoral processing
PROJECT PLAN APPROVAL	<u>Not Yet Fully Discussed</u> With basic components below <u>Basic Certification of Compliance</u> for matter of right projects <u>Medium Level Review</u> Built in administrative flexibility for massing to accommodate bonus density or limited off-site provision nearby <u>Full Waiver</u> a full waiver of all requirements through buyout or hardship would require BZA or ZC review.	Mayoral review and certification of plans for. • Compliance, or • Alternative means of compliance, or • Granting approval of waiver from requirements	Similar to modified proposal	• Developers stress that predictability of process and time-frame is essential • All involved wish to minimize situations where discretionary review or applications for relief are needed • For voluntary concept's medium level review, may be appropriate to consider a waiver or reduction of PUD filing fees if full PUD review is required for an inclusionary housing project.
RELIEF FROM REQUIRE-MENTS	See above. • Flexible standards for administrative review that would minimize need to go through a BZA-type process	Partial Relief: Hardship variance determined by mayor (BZA) (e.g , high, non-severable condo fees, historic preservation; etc)	Similar to modified proposal	• In Mandatory proposal BZA's not approving parking relief is not grounds for relief from IZ • Need to explore varying parking requirements to reduce cost of affordable units
		If Hardship, Requirement Can be Met By: • Off Site Units: similar in size/number as on-site		

TOPIC	OP NEGOTIATED CONCEPT	CAMPAIGN'S CONCEPT	VOLUNTARY CONCEPT	CONSIDERATIONS
	phases of a project. • <u>Exterior Finishes</u> same as market rate units • <u>Interior Finishes and Appliances</u> Requires additional study.	4 BR 1120 sf <u>Unit Distribution</u> : Reasonably disbursed throughout project. <u>Exterior Finishes</u> : same as market <u>Interior Finishes</u> : may vary from market		
PRICING METHODOLOGY	<u>Initial Housing Cost</u> Uses LIHTC methodology to set prices	Mayor sets rents and prices annually based on HUD-established AMI so units are affordable to low & moderate income households, not to exceed 30% gross income	Similar to modified proposal	• Commission cannot direct mayor to set prices • Achieving a separate schedule of condo fees for affordable unit purchasers may be difficult and potentially discriminatory; • Mixing affordable rentals into otherwise for-sale buildings would be difficult
CONTROL PERIOD	<u>Rental</u> : as yet undetermined; between 30 and 50 years <u>Ownership</u> : undetermined, between 10 to 20 years, renewable if sold during control period	Rental 50 years Ownership 20 yrs Renewable for 20 years when sold within 20 years	Rental: Similar to modified proposal Ownership: 10 years	• <u>Rental Period</u>: Concern that over 30 years may inhibit cyclical maintenance • <u>For-Sale Period</u>: Concern that restricting over 10 years may not permit owners to achieve adequate equity benefits and may inhibit sense of ownership
RECAPTURE OF FOR-SALE UNITS	<u>Resale During Control Period</u> – Similar to mandatory proposal. <u>Resale After Control Period</u> Owner could sell the at market rate. Profit balance split between the seller and the Housing Production Trust Fund	<u>Before 20 yrs</u> : Owner receives purchase price + CPI + improvements <u>After 20 yrs</u> : Owner receives ½ the difference between the sales price and the above calculation; (HPTF) receives	Similar to modified proposal	

INCLUSIONARY ZONING: DETAILED SIDE-BY-SIDE COMPARISON OF CONCEPTS

TOPIC	OP NEGOTIATED CONCEPT	CAMPAIGN'S CONCEPT	VOLUNTARY CONCEPT	CONSIDERATIONS
THRESHOLD		10 new or rehabilitated units	No threshold	
TARGET AREAS	Overlay Areas • Metro Station Areas • Housing Opportunity Areas • Development Opportunity Areas • Several Special Treatment Areas • <i>Exclude</i> low-density single-family zones • <i>Exclude</i> DD Outside of Overlays • PUDs required to be evaluated by IZ economic model • Other projects choose to seek participation in program	Overlay Areas • Most Metro station areas • Housing Opportunity Areas • Development Opportunity Areas • Several Special Treatment Areas • The Downtown Development District (DD), after January 2008 Mandatory, Outside Overlay • PUDs	Overlay Areas • Same areas as OP negotiated concept Outside of Overlay (s) Would apply to residential PUDs and to-be determined PUD-like applications outside of above areas DD and government-owned land not included in proposal.	• Comprehensive Plan permits bonus density only in these areas.
AFFORD-ABLE SET-ASIDES	• 50% of bonus density for high-rise rental, and between 40% to 50% of bonus density for high-rise condo units • 65% of bonus density for low-rise development. • Final set aside to be based on economic modeling. • May be different percentages for different areas.	• 15% of Residential units for New - Low-Rise Buildings • 12 % of Residential units for Mid-Rise and High-Rise Buildings • 7.5% of Residential units for Substantial Rehabilitation Projects	<u>Within overlay</u> Matter-of-right guidelines with set ratios to be determined by economic model for areas within overlay. <u>Outside of overlay</u> Applications evaluated by economic model on case-by-case basis.	• Consensus has been reached on using GFA rather than # of units • Considerable agreement on a 1:1 ratio of IZ units to bonus market rate units for rental projects • Discussion continuing on whether appropriate ratio for condo projects is closer to 1:1 or 1:1.5 • Discussion continuing on different percentages for different construction types.

TOPIC	OP NEGOTIATED CONCEPT	CAMPAIGN'S CONCEPT	VOLUNTARY CONCEPT	CONSIDERATIONS
	Based on square feet, not # units for R-5-A and higher. PUDs same ratio, but to be analyzed individually with evaluation of other public benefits			
INCENTIVES/ COMPENSATIONS	Types of incentives may include: <u>Bonus Density Increases</u>: For non-PUDs no greater than 20% density bonus possibly varying in different parts of overlay, - Relaxation of Certain Physical Restrictions on Development - Expedited Review Process	Up to 20% increase over base density, height & area, as limited by Height Act, and where otherwise not infeasible	Voluntary requires greater incentives such as more bonus density, expedited processing	Possibility of voluntary incentives being absorbed into land cost and being rendered ineffective
TARGET INCOMES	<u>Rental Low-Rise</u>: 50% of set aside @ 50% AMI; 50% of set aside @ 70% AMI <u>Rental High-Rise</u>: 50% of set aside @ 60%; 50% of set aside at 80% AMI. <u>Condo High-Rise</u>: Up to 100% @ 80% AMI.	50% of set-aside @ 80% AMI 50% of set-aside @ 50% AMI	Rental: HUD Section 8 Low-Income (65 of AMI) For-Sale 80% of AMI	May wish to give a range of flexibility to allow income adjustment to compensate for varying factors outside of program's control, such as interest rate changes
DEVELOP-MENT STANDARDS	<u>Unit Types</u> Proportional to unit types of market rate units <u>Units Sizes</u> Average square footage of IZ units could be less than for market rate units, as long as prescribed minimum standards (same as Campaign's) were met <u>Unit Distribution</u> not concentrated vertically, horizontally or in certain	<u>Unit Types</u>. No less than same average # of bedrooms as market-rate units, higher percentage of IZ units permitted with more bedrooms than market rate Unit Sizes: Studio 450 sf, 1 BR 600 sf, 2 BR 850 sf, 3 BR 1050 sf,	Similar to modified proposal	May wish to, at developer's option, permit IZ units to be disproportionately stacked in particular tiers, or less than proportionately represented on the upper stories of high rise buildings

TOPIC	OP NEGOTIATED CONCEPT	CAMPAIGN'S CONCEPT	VOLUNTARY CONCEPT	CONSIDERATIONS
		Buyout Contribution to HPTF:		
		Full Relief: Mayor (BZA) determines that compliance deprives applicant of <i>all</i> economic use of property		
		Enforcement of Relief Requirements: \$100,000 lien per off-site IZ unit until IZ certificate of occupancy		Lien exceeds DCRA schedule and requires Council action
APPLICANT POOL	Similar	Priorities: 1st to DC residents 2nd to those employed in DC - Must Be Primary residence - No DC home ownership for 5 yrs	Similar	- Consider length of prohibition on prior ownership, how to accommodate IZ occupants "moving=up" within IZ types, - Consider balance between commitment to DC residents and desire for new residents
	Financial Status Similar to mandatory	Financial Status Mortgage or rental credit qualifiable	Financial Status. Similar to mandatory	
	<u>Not Fully Discussed</u> <u>Public Purchase Option.</u> DC or non-profit housing provider should have 1st refusal for percent of IZ units.	Public Purchase Option: DCHA, non-profit housing providers have right of 1 st refusal for 40% of affordable units, and for purchase of units sold before 20 yr control ends	Public Purchase Option Similar to modified proposal	- Concern about having more than 30% of units owner by govt or non-profit - Concern about govt or non-profits renting out units owned in for-sale building
	<u>Selection</u> Government establishes and maintains list of eligible applicants. Developers and owners responsible for selection from qualified applicant pool.	<u>Selection</u> Mayor establishes, brokers and runs lottery <u>Continuation</u> Re-certification every 2 years	Selection: Similar to modified proposal	

TOPIC	OP NEGOTIATED CONCEPT	CAMPAIGN'S CONCEPT	VOLUNTARY CONCEPT	CONSIDERATIONS
CONTINUA-TION IN UNIT	Similar	<u>Rental</u> Annual income-certification Must move at lease-end if income exceeds eligibility <u>For-Sale</u> Primary residence. Income may increase <u>Both</u> (Sub) Lease w/mayoral permission	Similar	Need to resolve potential conflicts between IZ objectives to keep units affordable, and fair-housing protections for tentants, particularly with respect to groups whose incomes may predictably increase soon after moving into IZ unit, (e g , students)
ONGOING ADMINISTRATION	To be determined	<u>Developers</u> Detailed annual reports to Mayor <u>Renters</u> . Annual income re-certification to Mayor <u>Mayor</u> Brokering of applicant pool Extensive administration Detailed Annual Report	To be determined.	

ATTACHMENTS
TO MAIN REPORT