

DC CAMPAIGN FOR MANDATORY INCLUSIONARY ZONING

Endorsing Organizations

Affordable Housing Alliance
ANC1B
BB&T Bank
Bread for the City
Calvary Multilingual Learning Center
Center for Community Change
Central American Resource Center (CARECEN)
Clean Water Action
The Coalition of Nonprofit Housing and Economic Development
Coalition for Smarter Growth
DC ACORN
DC Action for Children
DC Coalition for Rent Control
DC Jobs with Justice
Development Corporation of Columbia Heights
East of the River CDC
East of the River Family Strengthening Collaborative
Emmaus Services for the Aging
Empower DC
The Enterprise Foundation
Friends of the Earth
Gray Panthers of Metro Washington
Greater Washington Americans for Democratic Action
Green Door
Habitat DC
Healthy Families Thriving Community Collaborative
Jews United for Justice
Jubilee Enterprise
League of Women Voters, DC Chapter
Local Initiatives Support Corporation
Metropolitan Washington Council, AFL-CIO
Mi Casa
Nation's Capital Child and Family Development Center
Neighbors' Consejo
PolicyLink
SEIU, Locals 82 and 722
Shaw Education for Action
Sierra Club, DC Chapter
So Others Might Eat (SOME)
South Washington West of the River
Family Strengthening Collaborative
Statehood Green Party
Teamsters Local 639
Tenac
Tenant Action Network
UFCW Local 400
University Legal Services
Ward 3 Smart Growth Coalition
Washington Legal Clinic for the Homeless
Washington Regional Network for Livable Communities

November 17, 2004

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Ms Carol Mitten
Chair, Zoning Commission

Mr Alberto P Bastida, AICP
Secretary to the Zoning Commission

441 4th Street, NW
Suite 210
Washington, DC 20001

Dear Ms Mitten and Mr Bastida

The endorsing organizations of the DC Campaign for Mandatory Inclusionary Zoning hereby petition the Zoning Commission to adopt a text amendment in the form of a new section in the Zoning Regulations establishing a mandatory inclusionary zoning policy in the District of Columbia. The original and twenty (20) copies of our proposed text amendment are attached.

By adopting a mandatory inclusionary zoning policy, the District could

- Produce affordable housing for lower and middle income workers,
- Support the creation of mixed income communities;
- Prevent rising prices from driving out low and moderate income residents, and
- Leverage the expertise and capacity of the private market to develop affordable housing

We respectfully urge the Zoning Commission to adopt the text amendment as soon as possible. We would appreciate it if you would keep us informed of the process by contacting Nina Dastur at 202-339-9335 (ndastur@communitychange.org) or Tonya Love at 202-857-3414 (tlove@dclabor.org) or Cheryl Cort at 202-244-1105 (ccort@washingtonregion.net).

Thank you for your consideration

Sincerely,



Nina K Dastur
Center for Community Change

ZONING COMMISSION
District of Columbia
04-33
ZONING COMMISSION
District of Columbia
CASE NO. 04-33
EXHIBIT NO. 1

INCLUSIONARY ZONING OVERLAY

xx00	General Provisions
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xx00 GENERAL PROVISIONS

- xx00 1 There shall be established an Inclusionary Zoning Overlay in the District of Columbia to provide a mechanism by which private residential development can contribute directly to the production of affordable housing in exchange, where possible, for the production of more housing units than is otherwise permitted as a matter of right.
- xx00.2 The Inclusionary Zoning Program shall apply throughout the District of Columbia.
- xx00.3 The purpose of the Inclusionary Zoning Program is to help accomplish the Housing Element of the Comprehensive Plan by making available adequate, affordable housing available across the city to meet the needs of current and future residents.
- xx00.4 The most important general purposes of the Inclusionary Zoning Program include the following.
- (a) To utilize the skills, abilities, and public obligation of private developers to produce quality affordable housing.
 - (b) To leverage private development, combined where appropriate with zoning density increases, to produce affordable housing throughout the District of Columbia.

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(c) To mitigate the impact of residential development on the availability and cost of housing available and affordable to low and moderate income households.

(d) To increase the production of affordable housing units throughout the city to meet existing and anticipated housing and employment needs.

(e) To provide for a full range of housing choices throughout the city for households of all incomes, sizes, and ages to preserve diversity and to ensure the benefits of economic integration for the residents of the District

(f) To reduce the overall burden of housing costs on low and moderate income households.

(g) To create a stock of housing that will be affordable to low and moderate income residents over a long term.

(h) To make homeownership opportunities available to low and moderate income residents

xx00.5 All inclusionary units created pursuant to this chapter shall be leased or sold only to qualified households as defined by this chapter during the affordability control periods established herein.

xx00.6 Except as permitted in xx04, inclusionary units shall be built on the site of the Development Project.

xx01 Applicability

xx01 1 The requirements of this chapter shall apply to any developer that submits an application for site plan approval or an application for a building permit after the effective date of this chapter for a residential or mixed use development project that includes ten or more dwelling units, in the following areas:

- a) Tenleytown Metrorail Station Area
- b) Whitehaven Woods
- c) Columbia Heights
- d) Howard Gateway
- e) Mount Vernon Square
- f) Potomac Avenue Metrorail Station
- g) Kenilworth/Parkside

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- h) Blitz Properties
- i) Camp Simms
- j) Congress Park
- k) Wheeler Heights Estate
- l) Washington Highlands
- m) Upshur Street Clinic Area
- n) Wisconsin and Western Aves., NW
- o) U Street
- p) Howard Gateway
- q) Northeast No. 1/Eckington Yards
- r) Buzzard Point/Near Southeast
- s) Georgia and Missouri Avenues
- t) Georgia and New Hampshire Avenues
- u) Fort Totten Metrorail Station Area
- v) Rhode Island Avenue Metrorail
- w) New York Avenue Corridor
- x) Hechinger Mall Area
- y) H Street
- z) Minnesota/Benning
- aa) Anacostia Metrorail
- bb) Saint Elizabeths Hospital
- cc) DC Village
- dd) Brookland
- ee) Benning Road and G Street, SE
- ff) Parkside
- gg) Martin Luther King, Jr. Avenue
- hh) Portal Site
- ii) Benning Road Metrorail Station
- jj) Nannie Helen Burroughs Avenue
- kk) Deanwood Metrorail Station Area
- ll) Takoma Metrorail Station Area
- mm) Shaw/Howard Metrorail Station Area
- nn) Georgia Avenue-Petworth Metrorail Station Area
- oo) Waterfront Metrorail Station Area
- pp) Navy Yard Metrorail Station Area
- qq) Stadium-Armory Metrorail Station Area
- rr) VanNess UDC Metrorail Station Area
- ss) New York Avenue Metrorail Station Area
- tt) Congress Heights Metrorail Station Area
- uu) Truxton Circle
- vv) Ledroit Park
- ww) Bloomingdale
- xx) Ivy City
- yy) Near Northeast
- zz) Trinidad
- aaa) Takoma

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bbb)	Woodley Park
ccc)	Cleveland Park
ddd)	North Cleveland Park
eee)	Chevy Chase
fff)	Brentwood
ggg)	Edgewood
hhh)	East Capitol Street/Capitol View
iii)	Logan Circle
jjj)	14 th St. NW Corridor

- xx01.2 The requirements of this chapter shall apply to any developer that submits an application for site plan approval or an application for a building permit for a residential or mixed use development project that includes ten or more dwelling units in the Downtown Development Overlay District on or after January 1, 2008.
- xx01 3 The requirements of this chapter shall apply to any developer that submits an application for site plan approval or an application for a building permit after the effective date of this chapter for a residential or mixed use development project that includes ten or more dwelling units in any area of the District of Columbia other than those areas listed in xx01 1 and where the developer is seeking an increase in FAR beyond the maximum applicable as a matter of right in the zoning district.
- xx01.4 The requirements of this Chapter shall apply to residential or mixed-use development projects constructed on land owned by or disposed of by the government of the District of Columbia, or the National Capital Revitalization Corporation or any subsidiary or successor land redevelopment agency to it, or any similar entity unless superseded by action of the Council of the District of Columbia. Notwithstanding the above, nothing in this section shall be construed to limit the District or the National Capital Revitalization Corporation from requiring that a greater percentage of units be made affordable or that units be made affordable to households at lower income levels than required by xx03.1 as a condition of the disposition of publicly-owned land.
- xx01.5 The provisions of any statute or other municipal regulations shall govern whenever they require that a greater percentage of units be made affordable than as provided under this chapter or that units be made affordable to households at lower income levels than required by this chapter.
- xx01.6 Residential developments subject to this chapter shall include housing created by new construction, the substantial rehabilitation of a residential or mixed-use development, and the conversion of a structure from its original or most recent use to residential purposes.

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- xx01.7 Development Projects subject to this chapter shall include contiguous parcels developed by the same developer and phased projects that in the aggregate include the development of ten (10) or more residential units. If subsequent development plans or building permits bring the total development of contiguous parcels or parcels divided by alleys to a combined total of ten (10) or more units within 2 years, any affordable units not produced in the first phase(s) of the development shall be added to the subsequent phase(s).
- xx01 8 A developer shall not avoid the requirements of this chapter by submitting piecemeal or phased development plans or building permit applications.
- xx01.9 Any developer of a development project containing nine (9) or fewer dwelling units may apply to the Mayor to participate in the Inclusionary Zoning program and receive the density bonus provided to Development Projects pursuant to subsection xx02. If the Mayor grants the application, the developer shall include at least one affordable unit within the development project.
- xx01 10 This chapter shall not apply to hotels, motels, inns, dormitories, rooming houses, boarding houses, community-based residential facilities, or single room occupancy developments.
- xx01 11 No developer shall fail to comply with the provisions of this chapter for any Development Project that applies for site plan approval or a building permit for a dwelling unit after the effective date of this chapter.
- xx01.12 No site plan approval, building permit, or certificate of occupancy shall be issued for any Development Project that does not meet the requirements of this chapter.
- xx02 Density Bonuses**
- xx02 1 Development Projects that contain inclusionary units shall receive up to a 20% increase in the base density, height, and area permitted by Chapter 4 of this Title as a matter of right as available given the limitations established by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended, D C. Code 2001 Ed. §§6-601.01 to 6-601.09 (formerly codified at D.C. Code §§5-401 to 5-409 (1994 Repl. and 1999 Suppl.)).
- xx02.2 The limitations upon residential density established by Chapter 4 of this Title shall be deemed modified to the extent required by the terms of this chapter.

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- xx02.3 In lieu of or in combination with bonus density provided for in xx02.1, a developer may apply to the Board of Zoning Appeals for a variance from parking requirements. The denial, in part or in whole, of the developer's application shall not be grounds for relief from the requirements of xx03.
- xx03 Set-Aside Requirements & Standards for Construction**
- xx03.1 The number of dwelling units to be provided as inclusionary units shall be determined by the type of Development Project, as follows:
- (a) Fifteen percent (15%) of the total number of residential units in newly-constructed Development Projects, other than mid and high rise structures, shall be designated as inclusionary units and made affordable to low and moderate income households. No fewer than 50% of the inclusionary units shall be made affordable to low income households. No more than 50% of the inclusionary units shall be made affordable to moderate income households.
- (b) Twelve percent (12%) of the total number of residential units in mid and high rise structures shall be designated as inclusionary units and made affordable to low and moderate income households. No fewer than 50% of the inclusionary units shall be made affordable to low income households. No more than 50% of the inclusionary units shall be made affordable to moderate income households.
- (c) Seven and a half percent (7.5%) of the total number of residential units in development projects that are substantially rehabilitated shall be designated as inclusionary units and made affordable to low and moderate income households. No fewer than 50% of the inclusionary units shall be made affordable to low income households. No more than 50% of the inclusionary units shall be made affordable to moderate income households.
- xx03.2 In computing the number of inclusionary units required in a Development Project of less than 15 units, fractions of units shall be disregarded. In computing the number of inclusionary units required in a Development Project of 15 or more units, fractions of units less than one-half shall be disregarded and fractions of units one half or greater shall be rounded to the next highest number.
- xx03.3 Inclusionary units in for-sale Development Projects shall be for sale and inclusionary units in rental Development Projects shall be rental units, provided that for sale units purchased by the D.C. Housing Authority or a

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qualified nonprofit developer pursuant to xx08 7 may be rented to qualified households.

- xx03.4 A Development Project that provides, pursuant to Federal or other District programs, affordable units equal to or in excess of the number that would be required under the terms of this chapter, with affordability terms and restrictions as set forth in the requirements of this chapter, shall satisfy the Inclusionary Zoning Program
- xx03.5 A residential development that provides, pursuant to Federal or other District programs, fewer affordable units than would be required under the terms of this chapter shall designate an additional number of affordable units subject to terms and restrictions as set forth in the requirements of this chapter specifically including but not limited to the affordability control periods set forth in subsection xx09, to satisfy the requirements of the Inclusionary Zoning Program.
- xx03.6 All inclusionary units shall be reasonably dispersed throughout the development project.
- xx03.7 The mix of unit sizes amongst the inclusionary units in a residential development shall contain on average the same number of bedrooms as the market rate units in the project, unless the developer elects to provide a higher percentage of inclusionary units with a greater number of bedrooms
- xx03.8 All inclusionary units shall be comparable in exterior design, materials, and finish to the market-rate units in the project.
- xx03.9 The interior of inclusionary units may be finished with less expensive materials and appliances.
- xx03.10 An inclusionary unit, whether for sale or rental, shall be of the following minimum floor areas, by bedroom size:
- (a) Studio or efficiency: 450 square feet
 - (b) One bedroom 600 square feet
 - (c) Two bedroom: 850 square feet
 - (d) Three bedroom 1,050 square feet
 - (e) Four bedroom: 1,120 square feet
- xx03.11 A developer shall submit to the Mayor site plans or plats that shall identify the specific number and location of residential units designated as inclusionary units in the Development Project, the size of each inclusionary unit, pricing, and a proposed schedule for completion of the inclusionary units. The Mayor shall review such plans and certify that the proposed Development Project meets the requirements of this Chapter.

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- xx03.12 No site plan approval shall be granted nor any building permit issued until the developer produces certification from the Mayor that.
- (a) the Development Project meets the requirements of this chapter; or
 - (b) an alternative method of compliance has been granted pursuant to xx04.7; or
 - (c) a waiver from or modification of the requirements of this Chapter has been granted pursuant to xx04.8.

- xx03.13 All inclusionary units in a project shall be constructed prior to or concurrently with the construction of non-inclusionary units.

xx04 Alternatives

- xx04.1 The intent of this Chapter is that inclusionary units be provided onsite.

- xx04.2 In certain exceptional circumstances, the Mayor may, at the formal written request of the developer, permit an alternative method of compliance to achieve the goals of this chapter, as set forth in xx00.4.

- xx04 3 As a requirement of granting an alternative method of compliance, the Mayor must find that the developer has demonstrated that building the required inclusionary units on-site would impose a significant hardship. A significant hardship may include but not be limited to:

(a) The inclusion of expensive and specialized social or health services in a retirement housing development that are not severable from the provision of housing, and that render units in the development unaffordable to targeted households;

(b) Exceptionally high fees in condominium developments that can not be reduced to levels affordable to targeted households by segregating out non-essential amenity, parking, or recreational costs.

(c) Existing unique or unusual site characteristics that unduly constrain or pose unusually high costs on the development of the subject property.

- xx04 4 The burden of proof in demonstrating a significant hardship shall be on the developer, who must make a full disclosure to the Mayor of all relevant and requested information.

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- xx04.5 The Mayor shall act on a request for an alternative to on-site development under this subsection within 45 days of receipt of the developer's application. The time period shall be suspended during the time it takes the developer to submit any information requested by the Mayor pursuant to xx04.4.
- xx04.6 If an alternative is granted, the Mayor shall issue a determination in writing that shall specify the basis for the approval and set forth in detail the alternative requirements that the developer shall meet, as prescribed by xx04.7. The determination shall be published in the *D C. Register*.
- xx04.7 Where the developer has demonstrated that providing inclusionary units on site would impose a significant hardship, the Mayor may approve the following alternative methods of compliance, in the following order of preference:
- (a) Inclusionary units may be constructed by the developer on an alternate site. The alternate site must be suitable for residential development and must be within the same Ward or a two mile radius of the Development Project.
- (i) Off-site units shall be comparable in size and type to the market-rate units being created, and of a number no fewer than the number of units that would otherwise have been required on-site.
 - (ii) Construction of off-site units shall be commenced within one year of the commencement of construction of the original Development Project.
 - (iii) The Mayor shall impose a lien on the Development Project equal to \$100,000 per off-site inclusionary unit, adjusted annually by the Consumer Price Index. The lien shall be removed when a certificate of occupancy has been issued for the off-site inclusionary units.
 - (iv) Inclusionary units constructed off-site shall not be counted by the developer toward any inclusionary unit requirement separately applicable to the off-site development project under the terms of this chapter.
 - (v) Inclusionary units constructed off-site shall not be located in any residential development project that has received any development subsidies from

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federal or District programs established to provide affordable housing.

(b) The developer may make a financial contribution to the District of Columbia Housing Production Trust Fund. The contribution shall be payable in full prior to the issuance of a certificate of occupancy for any dwelling unit in the Development Project.

(i) The financial contribution for each inclusionary sale unit shall be the difference between the average market sales price for the market-rate units in the subject development and the purchase price affordable to a low income household as defined in this chapter.

(ii) The financial contribution for each inclusionary rental unit shall be the difference between the average market rent for the market-rate units in the subject development and the rent affordable to a low income household calculated over a period of (20) years as defined in this chapter

(iii) Upon payment of the fee in full, the Mayor shall certify that the fee has been paid. Such certification shall establish compliance with the requirements of this chapter.

xx04 8 The Mayor may, upon written application by a developer, waive or modify the requirements of this chapter where the developer demonstrates by clear and convincing evidence that compliance will deprive the developer of all economically viable use of the property taken as a whole.

xx04.9 The Mayor shall act on a request for a modification or waiver under this subsection within 45 days of receipt of the developer's application. The time period shall be suspended during the time it takes the developer to submit any information requested by the Mayor pursuant to xx04 4.

xx04 10 If a waiver is granted, the Mayor shall issue a determination in writing that shall specify the basis for the waiver. The determination shall be published in the D.C. Register.

xx05 Income and Eligibility Standards

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- xx05.1 All inclusionary units created pursuant to this chapter shall be leased or sold only to qualified low and moderate income households as established pursuant to this chapter.
- xx05.2 No person or entity shall sell or lease an inclusionary unit created pursuant to this chapter to any person or household that does not meet the eligibility criteria set forth in xx05.1 or on any terms other than those established by this subchapter.
- xx05.3 The Mayor shall advertise the existence and terms of the Inclusionary Zoning Program to the general public in accordance with standards established under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sec 3601 et seq., shall accept applications from prospective tenants and purchasers, shall determine the qualifications of such persons including their creditworthiness as necessary to qualify for mortgage financing, and shall compile and maintain a list of qualified purchasers and tenants. Creditworthiness alone shall not disqualify an applicant from inclusion on the list; however, an applicant shall not be included in the lottery for available inclusionary units established by xx08.9 unless and until the applicant demonstrates that he or she can qualify for mortgage financing or obtain favorable credit approval for rental housing
- xx05.4 Applicants shall recertify their eligibility no less than every two years and at the time the household is selected through the lottery pursuant to xx08.9
- xx05.5 The Mayor shall select potential occupants of inclusionary units by lottery from a list of those persons qualified on the basis of gross household income, a relationship between household size and size of available units, and additional criteria as appropriate to conform with the requirements of this chapter
- xx05.6 The following guidelines shall be used to determine a household's eligibility to occupy an inclusionary unit:
- | | |
|---------------|--|
| Unit Size | Household Size |
| Efficiency | 2 people |
| One bedroom | 3 persons or fewer |
| Two bedroom | No less than 2 nor more than 5 persons |
| Three bedroom | No less than 3 nor more than 6 persons |
| Four bedroom | No less than 4 nor more than 8 persons |
- xx05.7 Eligible residents of the District of Columbia shall be given first preference for inclusionary units. Second preference shall be given to eligible persons employed in the District.

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- xx05.8 An applicant who is selected by the lottery established by xx08 9 is not required to accept an inclusionary unit available at that time. Refusal to accept an inclusionary unit shall not disqualify an applicant from future lotteries.
- xx06 Rental Inclusionary Units**
- xx06 1 Any person who occupies a rental inclusionary unit shall occupy that unit as his or her primary residence during the control period.
- xx06.2 Rental inclusionary units shall be leased for a minimum six (6) month period with a maximum lease of one year. The lease agreement shall require the tenant to occupy the unit as his or her primary residence, prohibit the subleasing of the unit except as provided in xx06 4, require continued compliance with the eligibility criteria of this chapter, and require the tenant to verify under oath on a form approved and provided by the Mayor his or her income and other facts required to certify his or her ongoing eligibility for occupancy on an annual basis.
- xx06 3 Owners of inclusionary units shall have all rights, privileges, and responsibilities accorded to market-rate owners or renters, including access to all non-fee amenities and those fee amenities for which they have made any additional required payment.
- xx06.4 A tenant of an inclusionary unit may be permitted to sublease the inclusionary unit on a temporary basis in exceptional circumstances, including but not limited to absence from the District of Columbia for military service. Application for permission to sublease the unit shall be made in writing to the Mayor. The Mayor shall issue a determination on the application within 30 days of its submission. Any sublease of the unit must be in accordance with the affordability requirements of this chapter.
- xx06.5 Tenants of inclusionary units shall submit annually an affidavit or certification on a form approved by the Mayor confirming their income and eligibility for continued occupancy of the inclusionary unit.
- xx06.6 Tenants of rental inclusionary units must continue to meet the income criteria established by this chapter to continue to occupy an inclusionary unit. A tenant shall remain income eligible to rent an inclusionary unit so long as the household's annual income does not exceed the maximum permitted by xx03.1 and xx05.1 at that time by more than 30%. However, a tenant who no longer meets such criteria may continue to occupy an inclusionary unit until the end of the lease term.

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- xx06.7 In the event that a tenant of an inclusionary unit no longer meets the income eligibility criteria of this chapter, the household must vacate the unit at the conclusion of the lease term. The owner shall not be obligated to evict the household, but must satisfy the requirements of this chapter within 6 months by making a comparable unit available to qualified renter at an affordable price. Should the owner elect to designate another unit as an inclusionary unit pursuant to this subsection, any and all rent restrictions on the original unit shall be terminated and the owner may rent the original inclusionary unit to the tenant household at the market rate.
- xx06.8 A tenant of an inclusionary unit who fails to submit affidavits or other certification required to verify his or her ongoing eligibility for residence shall be considered to be in violation of the lease agreement and subject to lease termination and eviction in accordance with the laws of the District of Columbia.
- xx06.9 On an annual basis, the developer of a Development Project containing rental inclusionary units shall certify under oath on a form approved and provided by the Mayor:
- (a) The number of inclusionary dwelling units, by bedroom size, that are vacant;
 - (b) The number of inclusionary dwelling units, by bedroom size, that are leased by individuals, the D.C. Housing Authority, and qualified non profit developers. For each such unit, the developer shall provide/state:
 - the address of the unit and the number of bedrooms it contains
 - the tenant's name and household size
 - the effective date of the lease
 - the tenant household's income as of the date of the lease
 - the current monthly rent; and
 - the number of parking spaces included in the monthly rent for the housing unit.
- xx07 **For Sale Inclusionary Units**
- xx07.1 All purchasers of inclusionary units, other than the D.C. Housing Authority or qualified non profit developers, shall be first time homebuyers from low or moderate income households.
- xx07.2 Each purchaser of an inclusionary unit shall certify, prior to close of escrow on a form approved by the Mayor, that the unit is being purchased and shall be maintained as the purchaser's primary place of residence. Failure of the purchaser to maintain eligibility for the District's Homestead exemption against the real property tax shall be construed as

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evidence that the inclusionary unit is not the primary place of residence of the purchaser.

xx07.3 The Mayor may require an owner who does not occupy the unit as his or her primary residence to offer the unit for sale to an eligible purchaser.

xx07 4 Notwithstanding xx07.2, an owner of an inclusionary unit may be permitted to rent the inclusionary unit on a temporary basis in exceptional circumstances, including but not limited to absence from the District of Columbia for military service. Application for permission to lease the unit shall be made in writing to the Mayor. The Mayor shall issue a determination on the application within 30 days of its submission. Any lease of the unit must be in accordance with the affordability requirements of this chapter.

xx07 5 All prospective purchasers shall be provided with written notice of the resale restrictions applicable to ownership of inclusionary units as set forth in this chapter.

xx07.6 Owners of inclusionary units shall have all rights, privileges, and responsibilities accorded to market-rate owners or renters, including access to all non-fee amenities and those fee amenities for which they have made any additional required payment.

xx08 Sale or Rental of Inclusionary Units

xx08.1 The Mayor shall regulate and monitor the sale or lease of all inclusionary units created under this chapter.

xx08.2 Rents for inclusionary units shall not exceed 30% of the annual gross income of targeted households. Specific prices shall be established by the Mayor and adjusted annually, based on the area median income for a household of four (4) in the Washington Metropolitan Statistical Area as established by the U.S. Department of Housing and Urban Development.

xx08.3 Housing costs for for-sale inclusionary units, including monthly housing payments, principal and interest payments, property taxes and insurance, and condominium or homeowner association fees shall not exceed 30% of the annual gross income of targeted households. Specific prices shall be established and adjusted annually by the Mayor based on the area median income for a household of four (4) in the Washington Metropolitan Statistical Area as established by the U S Department of Housing and Urban Development.

Rents and sale prices shall be adjusted by bedroom size as follows:

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<u>Number of Bedrooms</u>	<u>Adjustment Factor</u>
<u>Efficiency</u>	<u>70%</u>
<u>1 Bedroom</u>	<u>80%</u>
<u>2 bedroom</u>	<u>90%</u>
<u>3 bedroom</u>	<u>100%</u>
<u>4 bedroom</u>	<u>110%</u>

- xx08.4 Anytime after receipt of a building permit for the Development Project and prior to receipt of a certificate of occupancy for the inclusionary units, a developer shall submit a Notice of Availability of Inclusionary Units to the Mayor along with any materials created to market the Development Project. The notice shall advise the Mayor of the approximate date by which a particular inclusionary unit or units are or will be completed and ready for purchase or rental. The notice shall specifically identify the unit or units offered; the number of bedrooms, floor area and amenities for each unit; the approved sale or rental price for each unit; and evidence of issuance of building permit.
- xx08.5 Within 5 business days of receipt of the notice required by xx08.4, the Mayor shall notify the District of Columbia Housing Authority and qualified non-profits of the availability of inclusionary units.
- xx08.6 The District of Columbia Housing Authority and qualified non-profit housing developers shall have an exclusive right to purchase or rent up to forty percent (40%) of the inclusionary units created within a development for a sixty (60) day period from the date that the Notice of Availability is submitted by the developer to the Mayor.
- xx08.7 If the D.C. Housing Authority or any qualified non-profit housing developer elects to purchase or rent a particular inclusionary unit or unit(s), the D.C. Housing Authority or non-profit developer shall notify both the Mayor and the developer in writing by the end of the sixty (60) day period established in xx08.6 of the number and type of inclusionary units it intends to purchase or rent.
- xx08.8 The remaining sixty percent (60%) of the inclusionary units in a residential development and any inclusionary units that neither the D.C. Housing Authority nor qualified non profit developers elects to purchase shall be offered for rent or sale exclusively to households who meet the income and eligibility criteria of this chapter for a ninety (90) day period beginning on the date of the expiration of the first option to purchase or rent provided in xx08.6.
- xx08.9 Eligible occupants shall be determined by lottery amongst those registered with the Mayor.

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- xx08.10** In the event that the inclusionary unit has not been rented or sold to an income eligible occupant within the ninety (90) day period established by xx08.8, the unit may be rented or sold to any household regardless of income subject to the price and resale controls established by sections xx08.2, xx08.3 and xx09.
- xx08.11** Notwithstanding xx08 8, first priority for occupancy of rental units for which the D.C. Housing Authority or qualified nonprofits could have exercised their first right to purchase or rent but declined to do so shall be provided to eligible households registered with and qualified by the Mayor for the Inclusionary Housing Program who possess a Housing Choice Voucher. Applicants with Housing Choice vouchers shall be offered the opportunity to occupy available inclusionary units based on household and unit size. If necessary, the Mayor shall select amongst qualified voucher holders by lottery.
- xx08 12** Each time a unit is sold or rented during the applicable control period established by xx09, it shall be offered first to the D C. Housing Authority (as set forth in xx08.6) and then to eligible households through the Mayor, so long as ownership and rental of inclusionary units by the D.C Housing Authority and qualified non-profits does not exceed forty percent of the units in the development project.
- xx09 Affordability Control Periods**
- xx09 1** Rental inclusionary units shall be subject to income occupancy requirements and maximum rent limits for 50 years, beginning on the date that the first lease agreement for the unit takes effect.
- xx09 2** For-sale inclusionary units shall be subject to income occupancy requirements and resale price controls for a period of twenty (20) years from the date of settlement on the original sale
- xx09.3** If a for-sale inclusionary unit is sold to an eligible purchaser within twenty (20) years after its initial sale, the unit shall be treated as a new for-sale inclusionary unit, and a new control period shall begin on the date of the sale.
- xx09.4** In order to maintain the availability of the affordable housing units constructed pursuant to the requirements of this chapter, during the twenty (20) year control period on for-sale inclusionary units the price received by the seller of an inclusionary unit shall be no higher than the original purchase price plus a percentage increase therein equal to any increase in the CPI since the date of the previous sale, plus the amount of any capital improvement expenditures.

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- xx09.5** For the initial sale of an inclusionary unit that occurs after the expiration of the twenty (20) year control period, the seller's profit shall be one-half of the difference between
- (a) the net sales price, excluding closing costs such as title charges, transfer and recordation fees, commission fees, points and similar charges related to the closing that are paid by the seller; and
 - (b) the owner's purchase price plus a percentage increase therein equal to any increase in the CPI since the date of the previous sale, plus the amount of any capital improvement expenditures except to the extent that any such expenditures were required to bring the unit into conformity with the housing code, 14 D.C.M.R.
- xx09.6** The other half of the proceeds generated by the sale as calculated pursuant to xx09.5 above shall be deposited into the District's Housing Production Trust Fund to help produce or preserve affordable housing in the District of Columbia.
- xx09 7** The developer shall execute and record with the Recorder of Deeds a covenant on the Development Project which shall contain at a minimum the following:
- (a) A statement that the provisions of this chapter shall apply to the property and shall run with the land for the entire control period,
 - (b) A statement that the covenants shall:
 - (i) bind the owner of the Development Project and any owner(s) of inclusionary units, and all other parties with an interest in title to the Development Project during the control period, and;
 - (ii) run with the land for the entire control period;
 - (c) A statement that these covenants shall be senior to all instruments securing permanent financing, except that the covenants shall provide that, in the event of foreclosure, the covenants shall be released.
- xx09.8** The covenants required by xx09 7 shall be binding upon all assignees, mortgagees, purchasers and other successors in interest.
- xx09.9** At the time of the initial sale, the developer shall provide in the sales contract a copy of the recorded covenant running with the land.

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xx09.10 Prior to executing a contract to purchase or rent an inclusionary unit, the prospective purchaser or renter shall execute a certificate of disclosure on a form prescribed by the Mayor that shall explain any deed restrictions, restrictive covenants, or liens that are placed against the property (in order to ensure long term affordability) and the purchaser or renters intent and agreement to be bound thereby.

xx10 Administration and Enforcement

xx10.1 The provisions of this chapter shall be administered and enforced by the Mayor.

xx10.2 On an annual basis, the Mayor shall report to the Zoning Commission on:

- (a) the number of inclusionary units produced at each targeted income level;
- (b) the number of inclusionary units produced for sale;
- (c) the number of inclusionary units produced for rent;
- (d) the average income of the households that purchased or rented inclusionary units;
- (e) the number of inclusionary units lost from the affordable housing stock due to the expiration of the control period;
- (f) the number of inclusionary units purchased or rented by the D C. Housing Authority and qualified non-profit developers,
- (g) the value of the subsidy, if any, contributed toward the rental or purchase of inclusionary units by the D.C Housing Authority to make them affordable to lower income households;
- (h) the average rent and sale prices for inclusionary units at each bedroom size;
- (i) the number of requests for alternative compliance that were granted, and the number of inclusionary units produced off-site and the amount that was contributed to the Housing Production Trust Fund as a result.

xx10 3 Affordable units shall be rented or sold subject to deed covenants, contractual agreements, and or other mechanisms restricting the use and occupancy, rent levels, and sales prices of such units to ensure their affordability. All restrictive instruments shall be subject to review and approval by the Mayor.

xx10 4 All contractual agreements with the Mayor and other documents necessary to ensure compliance with this chapter shall be executed prior to and as a condition of the issuance of any building permit or certificate of occupancy.

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- xx10.5 The deed of a Development Project shall include an express statement that the Development Project is sold subject to the terms and requirements set forth in the Inclusionary Zoning Program covenants
- xx10.6 The deed of a for sale inclusionary unit shall include an express statement that the inclusionary unit is sold subject to the terms and requirements set forth in the Inclusionary Zoning Program covenants.
- xx11 **Penalties for noncompliance**
- xx11.1 If a developer fails to comply with the terms of this Chapter, the Mayor shall impose such sanctions, as appropriate to the nature of the noncompliance, including but not limited to:
- (a) Withholding the recording of plats or plans;
 - (b) Withholding or revocation of building permit(s);
 - (c) Issuance of stop work orders; and
 - (d) Withholding or revocation of certificates of occupancy.
- xx11.2 Any sanction imposed pursuant to xxxx shall be lifted upon a demonstration by the developer(s) of compliance with the terms of this chapter.
- xx11.3 The Mayor may institute any appropriate legal actions or proceedings necessary to ensure compliance with the provisions of this chapter, including, but not limited to, actions to deny, suspend, or revoke any permit or other development approval. The Mayor shall be entitled to any costs or expenses incurred in the enforcement of this chapter, including attorneys' fees, as awarded by a court.
- xx11.4 Any individual or entity who sells an inclusionary unit in violation of the provisions of this chapter shall forfeit all monetary amounts in excess of the sale or resale price established by xx08.3 obtained thereby. Such amounts shall be deposited into the District's Housing Production Trust Fund.
- xx11.5 Any lessor who rents an inclusionary unit in violation of the provisions of this chapter shall forfeit all monetary amounts in excess of the rental rates established by xx08.3 obtained thereby. Such amounts shall be deposited into the District's Housing Production Trust Fund.
- xx11.6 No building permit for any project, whether residential or commercial, shall be issued for any project proposed in the District of Columbia where the Mayor approved the developer's request for an alternative form of compliance and subsequently failed to comply with the terms of subsection xx04.7.

xx12 Severability

xx12.1 In case any provision, paragraph, or part of this Chapter should be for any reason declared invalid or unconstitutional by any court of last resort, every other provision, paragraph, or part shall continue in full force and effect.

xx99 Definitions

“Affordable” - a unit that has a total housing cost that does not exceed 30% of the targeted household’s gross income. The calculation of affordability for homeownership units shall include monthly mortgage principle and interest payments, homeowner’s insurance, property taxes, and homeowners’ association fees, where applicable. The calculation of affordability for rental units shall include monthly rent but shall not include any charges for utilities to be borne by the renter household.

“Capital Improvement” a modification, addition, repair or renovation made to a unit other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed deductible under the Internal Revenue Code

“Closing Costs” – includes statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, and fees for preparation of loan documents and deed of conveyance.

“Consumer Price Index” the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Washington metropolitan area

“Control Period” – the time an inclusionary unit is subject to owner occupancy rules and maximum rent limits or resale price controls as set forth in this xxxx. The control period is 50 years for rental projects and 20 years for sale units, and begins on the date of initial sale or rental. If a sale or rental unit is sold within the control period, the unit must be treated as a new inclusionary unit and a new control period must begin on the date of the sale.

“Density Bonus” an increase in floor area ratio than would otherwise be permitted by the applicable zoning designation.

“Developer” the person or persons, firm, partnership, joint venture, association, corporation or any other public or private entity having sufficient proprietary interest in real property to commence, maintain or operate a

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development project or who seeks a permit or other approval from the government of the District of Columbia for the construction of a development project that includes ten (10) or more units intended for residential use.

“Development Project” - any real estate development that proposes the construction or placement of ten (10) or more residential dwelling units on a parcel of land or on contiguous parcels of land within the District of Columbia and is thereby required to provide inclusionary units pursuant to this chapter. Projects at one location undertaken in phases or stages or otherwise developed in distinct sections shall be considered a single Development Project for purposes of this chapter.

“Dwelling Unit” – one or more habitable rooms forming a single unit that is used for living and sleeping purposes, that may or may not contain cooking facilities.

“Eligible Household” a person or household whose income qualifies the person or household to purchase or rent an inclusionary unit during the unit’s control period.

“First time homebuyer” means a household of which no member has owned a home during the past five (5) years

“Gross Income” - total annual income from all sources, including but not limited to wages, interest, dividends, social security, pensions, government benefits, alimony, and child support, of all members of the household.

“Housing Choice Voucher” -- housing assistance, in the form of direct payments to private landlord, secured by the D.C. Housing Authority from the U.S. Department of Housing and Urban Development as established by United States Housing Act of 1937, 42 U.S.C.A. §§ 1437f, as amended by the Quality Housing and Work Responsibility Act of 1998, Title V of Pub. L. No. 105-276, 112 Stat. 2461, 2518 (October 21, 1998) that low-income households can use to rent apartments and homes on the private market.

“Housing Production Trust Fund” the trust fund established within the Department of Housing and Community Development by the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law No. 7-202, as amended by D.C. Law 14-114, D.C. Code §42-2801 et seq.) the purpose of which is to produce housing affordable to low and moderate income households.

“Initial Rental” – the first transfer of occupancy from a developer to a qualified renter household.

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“Initial Sale” – the first transfer of title from a developer to a qualified purchaser household.

“Inclusionary unit” - a unit set aside for sale or rental to low and moderate income households as required by this Chapter

“In lieu fee” - a fee paid by a developer into the District of Columbia Housing Production Trust Fund in place of providing the required inclusionary units.

“Low income household” – a household of one or more individuals with a total income equal to less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Department of Housing and Community Development

“Mid and high rise structures” - development projects that include ten (10) or more units intended for residential use that are

- (a) five or more stories,
- (b) newly constructed of concrete and/or steel; and
- (c) serviced by an elevator.

“Moderate income household” - a household of one or more individuals with a total income equal to between fifty percent (50%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Department of Housing and Community Development.

“Off-site” - a location outside the boundaries of a Development Project but within either a two mile radius of or the same ward boundaries as the Development Project.

“Phased or segmented project” a project on one lot, or two or more adjoining lots under common ownership or common control for which building permits are sought within a period of two years from the first date of application for any building permit for the Development Project.

“Qualified household” a person or household whose income qualifies the person or household to purchase or rent an inclusionary unit during the unit’s control period.

“Qualified non-profit” means a nonprofit housing provider determined by the Mayor to have the capacity and expertise to effectively purchase and/or rent and manage inclusionary units, based on the following criteria

- 1) the experience of the entity in providing and managing housing for low and moderate income households, particularly within the District of Columbia

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- 2) verification of non-profit status;**
- 3) history and structure of the organization, including names, addresses, and business affiliations of all board members, and qualifications of executive staff members;**
- 4) sources of financing for both acquisition and operation of the inclusionary units;**
- 5) the client population to be served in the inclusionary units; and**
- 6) long range plans for the inclusionary units.**

“Resale” transfer of title after the initial sale.

“Substantial rehabilitation” replacement of two or more major systems including but not limited to electrical, plumbing, HVAC, roof, and foundation or where the rental or sales price to be established for the redeveloped units represents an increase of 35% or more over the pre-rehabilitation level, or where the cost of any improvements, additions, alterations, or repairs within any 12 month period exceed one hundred percent (100%) of the assessed value of the building as set forth in the records of the Office of Tax and Revenue as of the date of the building permit application.

“Targeted Household” either a qualified low income household or qualified moderate income household.

“Waiver” a determination by the Mayor that a developer shall be released from meeting the requirements to set forth in this Chapter.