

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF PLANNING



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Office of the Director

TO: District of Columbia Zoning Commission

FROM: *J. S. Fer*  
Ellen McCarthy, Director

DATE: April 24, 2006

SUBJECT: Zoning Commission Case # 04-33 – Proposed Inclusionary Zoning Regulations

ZONING COMMISSION  
District of Columbia  
CASE NO. 04-33  
EXHIBIT NO. 194

The following is the DC Office of Planning's (OP) review and written comment to the proposed Inclusionary Zoning (IZ) regulations for the above case published in the DC Register on February 24, 2006. OP's review focuses on several areas including:

- Treatment of Planned Unit Developments (PUD)
- Right of Purchase by Public or Non-Profit Entities
- Development Standards
  - Unit Proportionality
  - Size
  - Unit Distribution
- Interpretations & Minor Language Refinements

OP's recommended deletions are provided in ~~strike-through~~ format and additions are provided in ***bold italics***. A copy of the advertised regulations has been attached.

#### TREATMENT OF PLANNED UNIT DEVELOPMENTS

OP is very concerned that the Inclusionary Zoning Overlay be applicable to PUDs. OP believes strongly that, within the mapped areas of Overlay, ~~there should be mandatory minimum Inclusionary Zoning requirements applied to PUDs.~~

OP recommends the following language:

***Section #TBD The minimum set aside of inclusionary units for a planned unit development subject to 2603.2 shall be 10% of the matter of right development under the base zone. The minimum affordable set aside of inclusionary units for a planned unit development subject to 2603.4 shall be 8% of the matter of right development under the base zone.***

The minimum should not count as a public benefit, but merely a standard matter-of-right requirement of the zoning regulations.

OP bases this recommendation on several factors:

- An exemption would reduce predictability that the mandatory inclusionary zoning provides. It could result in the projects receiving the largest bonus having the smallest percent of affordable units and increase land costs based on speculation that IZ is not required. In turn this could destabilize land prices.

As an example, discussions with developers indicate, a developer would offer a land owner \$90 per FAR square foot for by-right development and approximately \$60 per FAR square foot for each additional FAR square foot achieved through a PUD. In the case of a site currently zoned for 100,000 square feet of by-right development, a PUD might permit a 60,000 square foot bonus; the purchase price would range from \$9,000,000 to \$12,600,000. This demonstrates the tremendous potential value that can be gained by the seller and developer when the applicant pursues a PUD.

- Without a minimum requirement, developers may seek to avoid any requirement by entering the PUD process. This could dramatically decrease the potential number of affordable units that are needed in the District and increase the number of PUD applications, requiring review by the Commission.

Exemption would dramatically increase the number of PUDs being submitted to the Zoning Commission for review. Since the overlay could cover a large percentage of the district, this increase in the number of PUD applications would become problematic. The Commission has expressed concern with other overlays, when they would potentially create a dramatic increase in the case load. OP believes totally exempting PUDs from IZ would have the same affect

- Other overlays in the Zoning Regulations affirm PUDs inclusion within the overlay. For instance, 1700.7 of the Downtown Development District (DD) states that:

“(b) The PUD process shall not be used to reduce requirements in this chapter for housing or preferred uses, specifically retail, service, entertainment, arts, and residential uses;”

This language ensures that PUDs in the DD fulfill the public goals articulated in the Downtown Plan and codified in the DD Overlay.

Conversely, OP does not want to discourage PUDs and recognizes that there is a balance between achieving affordable units and encouraging PUDs. A mandatory minimum should therefore take into account several factors, including:

- PUDs provide other significant public benefits in addition to affordable housing that are important to the District. Provision of these other public benefits should be encouraged.

- PUDs are voluntary efforts on the part of the applicant. For an applicant to pursue a PUD there must be an economic incentive such as a better return that provides value to the applicant. An affordability requirement that is too restrictive will discourage PUDs.

For these reason OP recommends that the mandatory minimum affordability requirement for PUDs be equal to the 8% to 10% minimum matter-of-right standard as stated in the draft regulations (not a percent of the total PUD density increase). Any bonus density received by the project through a PUD would then be evaluated and commensurate with the additional public amenities proffered by the applicant, which of course could include additional affordable units.

## **RIGHT OF PURCHASE BY PUBLIC OR NON-PROFIT ENTITIES**

Purchase of units by public entities and non-profits is an important part of Inclusionary Zoning regulations. There are several policy goals that are achieved and, in many cases, administrative goals that are achieved through public/non-profit purchase. An IZ disposition process is commonly used to achieve the following:

- To further write down the cost of units in order to provide the units to lower income households (Policy Goal).
- To extend the control period of an affordable unit (Policy Goal).
- At resale it is used as a tool for monitoring compliance and enforcement (Administrative Goal).

IZ administration usually includes “priority market periods” where the units are first offered to public/non-profit entities and then offered to target households. After a priority marketing period expires, the unit may be offered (with the resale restrictions) to the general public because it is undesirable for the unit to sit vacant for an extended period of time.

### **Section 2602.5**

Section 2602.5 of the proposed regulations reads as follows:

- 2602.5            An owner/occupant of an inclusionary unit may sell the unit at a price greater than the maximum permitted under the purchase/rental schedule if the price is offered by the Mayor.

**OP recommends this section be deleted from the text.** As stated, inclusionary zoning regulations often have a provision for the government or non-profits to purchase inclusionary units for two reasons. First, is to write down the value of the unit to make it affordable to even lower incomes. Second, is to maintain the unit as affordable after the control period has expired. Under the first reason, the price paid to the developer or owner/occupant would be the control price determined in accordance with the empowering legislation and administrative regulations. The second reason would only occur after the

control period has expired and would force the government to pay a “market” price. The requirement of in perpetuity sent by the Zoning Commission makes this unnecessary.

OP believes the confusion over the need for this statement comes from testimony regarding owner/occupants ability to achieve some equity growth from their investment. The resale prices of inclusionary units are not static, but instead rise with an index such as the Consumer Price Index or a wage index that tracks the change in the Area Median Income. In this way an inclusionary unit creates an asset for the target households, but is also kept affordable for future target households.

## **Section 2603.5**

### **OP recommends the following changes:**

2603.5      ~~At any time prior to the issuance of the first certificate of occupancy for an inclusionary development,~~ The Mayor, ***the DC Housing Authority***, shall have the right to purchase up to twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.

OP has added the DC Housing Authority because they are an agency independent from the District Government that is charged with developing affordable housing. Their participation in IZ should be empowered outside the powers of a Mayor.

New for-sale inclusionary units are often sold to eligible households prior to construction. The rights of first refusal for the Mayor must therefore take place prior to the units being pre-sold to an eligible household. OP is working with OAG on the administering legislation and regulations and envisions language to the effect that the government and non-profits will have a time limit of 30-60<sup>th</sup> days on the right to purchase 25% of the newly constructed inclusionary units. After the time limit has expired the units may then be sold to eligible households.

## **DEVELOPMENT STANDARDS**

### **Unit Proportionality**

OP is concerned about section 2605.4. The proposed language on the proportions of unit types reads:

2605.4 The mix of unit sizes amongst the inclusionary units in an inclusionary development shall contain on average at least the same number of bedrooms as the market-rate units in the project.

OP believes this language is too vague. Use of the word “average” would enable the developer to include more studio or 1-bedroom units balanced by differing proportions of larger units.

**OP recommends the following language previously provided to the commission:**

**2605.4      *The proportion of studio efficiency and one-bedroom inclusionary units to all inclusionary units shall not exceed the proportion of market-rate studio efficiency and one-bedroom units to all market rate units.***

The table below demonstrates the potential mix of Inclusionary Units that would meet the language as it has been advertised.

| Unit Types |            | Market Unit Mix |                | IZ Unit Mix #1 |                | IZ Unit Mix #2 |                |
|------------|------------|-----------------|----------------|----------------|----------------|----------------|----------------|
| Unit Type  | # of Rooms | Ratio of Units  | Avg # of Rooms | Ratio of Units | Avg # of Rooms | Ratio of Units | Avg # of Rooms |
| Studio     | 1          | 0.2             | 0.2            | 0.4            | 0.4            | 0              | 0              |
| 1-Bedroom  | 2          | 0.5             | 1              | 0.1            | 0.2            | 0.9            | 1.8            |
| 2-Bedroom  | 3          | 0.3             | 0.9            | 0.5            | 1.5            | 0.1            | 0.3            |
| 3-Bedroom  | 4          | 0               | 0              | 0              | 0              | 0              | 0              |
|            |            | Market Avg      | 2.1            | IZ Avg         | 2.1            | IZ Avg         | 2.1            |

OP believes the central public policy goal that can be achieved through Inclusionary Zoning is diverse neighborhoods. No other affordable housing tool is as effective in delivering affordable housing in places where land prices make affordable housing investment prohibitively expensive. Tied to this, IZ enables families to live in neighborhoods they could not otherwise afford.

OP has a fundamental policy disagreement with the Campaign for Mandatory Inclusionary Zoning (CMIZ) over the type of affordable units that are currently needed in the District. The campaign believes the need for affordable units is in smaller studio and one-bedroom units. This is based on the percentage of low income households that are small households of one and two people. However, this does not consider the supply of units that are available.

OP's places emphasis on the shortage of larger family units of two or more bedrooms. This is based on two factors. First, is the current availability of family sized units. An analysis of the American Communities Survey<sup>1</sup> (ACS) indicates that family sized units are half as likely to be vacant as studio and 1-bedrooms. According to the ACS, 2-bedroom and larger units have a vacancy rate of 4%, while the vacancy rate for Studios and 1-bedrooms is 9%. This recent analysis also supports a study completed by the Department of Housing and Community Development several years ago that documented the supply of family sized units are in the greatest shortage relative to the demand.

Second is the decline of families in the District documented by the census. Much of the District's population loss over the last 35 years has been due to families moving from the District. Population declined significantly, but households did not. The District's average household size has declined much faster than the rest of the nation. This is due to many reasons, but part of it is certainly the lack of availability and the cost of family sized units.

<sup>1</sup> The ACS is a continuous survey of households conducted by the US Census in between the decennial census. It asks many more detailed questions of those surveyed than the decennial census.

OP's language restricts the developer to keeping studio and 1-bedroom units in the same proportion as market rate units, but allows them the choice to provide a greater proportion of two and/or three bedroom affordable units if the design of the building or other factors leads them to that decision.

This language also covers how affordable units are allocated as each additional unit is added. In order to maintain the proper ratio, this language would require a developer to allocate the first affordable unit to a 2-bedroom before permitting a studio or 1-bedroom unit.

### Unit Size

**OP strongly recommends that the Zoning Commission use the minimum size standards proposed by the Campaign for Mandatory Inclusionary Zoning.** Section 2605.7 would therefore read:

- 2605.7**      *An inclusionary unit, whether for sale or rent, shall be of the following minimum floor areas, by bedroom size:*
- (a) Studio or efficiency: 450 net 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*

During discussions between OP, the Campaign and developers, all sides agreed that Inclusionary Units could be smaller than the market rate units at the developers' discretion and as designs permit. In some cases, unit sizes by type will be identical. In other cases, site conditions and the architecture of the project might create several different sizes by type. Both sides benefit from this perspective. First, the Campaign recognized that allowing IZ units to be smaller, with minimum size protection, enables the possibility that more IZ units could be made available within the bonus density. The minimum size standards were added to protect intended occupants from sub-standard units. Second, smaller units enable the developers to receive higher revenue per square foot for an IZ unit. While some thought the unit based costs such as appliances canceled out this benefit, size is significant because the model assumed the IZ units would be smaller than the market rate units. However, it is important to note that there is still some developer concern that the proposed regulations do not properly balance the incentives with the requirements. With this in mind, OP reiterates our support for allowing IZ units to be of smaller size.

OP's only other comment to using the advertised language is that the proposed minimum sizes are based on multi-family developments and would not be appropriate or provide sufficient protection for row house development. The Zoning Commission's language would be more appropriate in the case of row houses and could be adapted to read:

- 2605.8**      The gross floor area of an inclusionary unit *in a row house development* shall be not less than 95% of the average ~~that of a comparable market-rate unit, as determined by bedroom size,~~ *but may include additional bedrooms.* ~~If there is more than one size for a particular type of market rate unit, the average~~

~~inclusionary unit size shall be not less than the 95% of the average size of the comparable market rate units.~~

## Unit Distribution

OP is somewhat concerned about the language used in the text regarding unit distribution. Section 2605.9 reads:

2605.9 All inclusionary units shall be reasonably dispersed throughout the development project.

OP believes this is too vague to provide proper guidance during the project approval process. The language might allow inappropriate interpretation causing excessive concentration on one hand or significantly impact developers on the other. Few IZ regulations require units to be “reasonably dispersed”, which could imply units on upper floors of a high rise project. **OP recommends the following alternative language:**

***2605.9 Inclusionary units shall not be overly concentrated on any floor or building of a project.***

This language would permit a majority of IZ units to be located on lower floors as long as they are not overly concentrated on any one floor. This preserves for the developer the ability to charge market rents on higher floors where there may be significant view premiums, but protects IZ units and the floors they are on from being stigmatized. Again, in light of continued developer concern over the balance of the incentives and requirements OP recommends a change to “units shall not be overly concentrated.”

## INTERPRETATIONS & MINOR LANGUAGE REFINEMENTS

### Section 2602.1 (c-iii)

OP wishes to confirm its interpretation of Section 2602.1 (c-iii). OP interprets the section to mean that Inclusionary Zoning would apply to, at minimum, an existing building with twenty (20) units<sup>2</sup> that is being expanded by ten units. The critical connections in the section are the statements:

2602.1...developments that:

- (b) Have ten (10) or more dwelling units (including off-site inclusionary units); ***and***
- (c) Are either:
  - (iii) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more.”

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<sup>2</sup> Or equivalent gross square footage.

OP interprets this to mean the new construction of ten or more units when added to an existing building must represent a 50% expansion of the existing building for Inclusionary Zoning to apply.

### **Section 2603.3**

Section 2603.3 apportions the Inclusionary Units between the low and moderate income categories. It requires the IZ units be evenly split between the two target income categories. However projects may end with an odd number of Inclusionary Units. The Zoning Commission may wish to give direction in the event that the affordability requirement results in an odd number of units. **OP recommends the following sentence be added to the paragraph:**

2603.3            Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, W-0 and W-1 shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households. ***The first inclusionary unit and each additional odd number unit shall be set aside for moderate income households with each additional even number unit set aside for low income households.***

### **Section 2605.1**

This section states that Inclusionary units within a for-sale development may not be offered for lease. However, there are instances when an eligible owner/occupant may have to lease their unit for a limited time, such as when their job sends them overseas or similar circumstances. An eligible owner/occupant should be able to request an administrative decision to lease their unit for a limited amount of time at the published affordable rents. **OP therefore recommends the following language be added to the section:**

2605.1            Inclusionary units within a for-sale development may not be offered for lease ***except as provided in the Act and the Administrative Regulations.***

This addition will permit an administrative process to allow an owner occupant to rent their unit for a limited period of time, typically up to two years.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PROPOSED RULEMAKING**

**ZC CASE NO. 04-33**

**(Text Amendment – Inclusionary Zoning)**

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

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

The following rulemaking action is proposed:

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

**CHAPYER 26 INCLUSIONARY ZONING**

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

**2600 GENERAL PROVISIONS**

- 2600.1 This chapter establishes an Inclusionary Zoning Program that furthers the Housing Element of the Comprehensive Plan by increasing the amount and expanding the

geographic distribution of adequate, affordable housing available to current and future residents.

2600.2 It is the intent of the Zoning Commission to promulgate only such regulations as are necessary to establish the minimum obligations of property owners applying for building permits or certificates of occupancy under an Inclusionary Zoning Program. All other aspects of the program, including the setting of maximum purchase prices and rents, the selection and obligations of eligible households, and the establishment of enforcement mechanisms such as covenants and certifications shall be as determined by the Council and Mayor of the District of Columbia.

2600.3 The most important general purposes of the Inclusionary Zoning Program include the following:

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

## 2601 DEFINITIONS

2601.1 When used in the chapter, the following terms and phrases shall have the meanings ascribed:

**Achievable bonus density** - The amount of the bonus density permitted under § 2604 that potentially may be utilized within a particular inclusionary development, notwithstanding constraints resulting from the physical characteristics of the land or restrictions imposed by District or federal laws and agencies.

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

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

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

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

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

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

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

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

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

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

**Moderate-income household** - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty percent (50%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

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

**2602            APPLICABILITY**

2602.1        Except as provided in 2602.3, the requirements and incentives of this chapter shall apply to developments that:

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

2602.2        A new development with less than ten (10) dwelling units shall become subject to this chapter upon the filing of an application for a building permit to add one or more dwelling units to the development within a two year period after the issuance of the last certificate of occupancy, if the construction for which application has been filed would result in the development having ten (10) or more dwelling units.

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

2602.4        Except as provided in §§ 2602.5 and 2608.1 (c), all inclusionary units created pursuant to this chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists.

2602.5        An owner\occupant of an inclusionary unit may sell the unit at a price greater than the maximum permitted under the purchase/rental schedule if the price is offered by the Mayor.

**2603            SET-ASIDE REQUIREMENTS**

- 2603.1 Inclusionary developments for which the primary method of construction does not employ steel and concrete frame structure located in an R-3 through an R-5-B zone district or in a C-1, C-2-A, W-0 or W-1 zone district shall devote the greater of 10% of its matter of right density, or 75% of its achievable bonus density to inclusionary units.
- 2603.2 Inclusionary developments of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-3, CR, SP, W-2 or W-3 zone district shall devote the greater of 8% of its matter of right density or 50% of its achievable bonus density to inclusionary units.
- 2603.3 Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, W-0 and W-1 shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households.
- 2603.4 Developments located in CR, C-2-B through C-3-C, W-2 through W-3, and SP zone districts shall set aside 100% of inclusionary units for eligible moderate-income households.
- 2603.5 At any time prior to the issuance of the first certificate of occupancy for an inclusionary development, the Mayor shall have the right to purchase up to twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.

**2604 BONUS DENSITY**

- 2604.1 Inclusionary developments subject to the provisions of this chapter may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §6-601.01, *et seq.* (2001 Ed.)).
- 2604.2 Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the 20% bonus density:

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

- 2604.4 Inclusionary developments in R-3 and R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

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

## 2605 DEVELOPMENT STANDARDS

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

- 2605.6 The interior amenities of inclusionary units such as finishes and appliances shall be comparable to the market-rate units, but may be of less expensive materials and appliances.
- 2605.7 The gross floor area of an inclusionary unit shall be not less than 95% of that of a comparable market-rate unit, as determined by bedroom size. If there is more than one size for a particular type of market-rate unit, the average inclusionary unit size shall be not less than the 95% of the average size of the comparable market-rate units.
- 2605.8 All inclusionary units in an inclusionary development shall be constructed prior to or concurrently with the construction of market-rate units, except that in a phased development the inclusionary units shall be constructed at a pace that is proportional with the construction of the market-rate units.
- 2605.9 All inclusionary units shall be reasonably dispersed throughout the development project.
- 2606 EXEMPTION FROM COMPLIANCE**
- 2606.1 The Board of Zoning Adjustment shall reduce the requirements of § 2603 for each square foot of achievable bonus density that cannot be accessed due to:
- (a) Site conditions such as shape, slope or other similar physical conditions; or
  - (b) Development restrictions imposed on the property by District or federal government agencies.
- 2606.2 Applicants seeking relief under § 2606.1 (a) shall submit architectural plans and elevations studies demonstrating the impact of site conditions on achieving the maximum permitted bonus density
- 2606.3 Applicants for relief under § 2606.1 (b) shall include with their application the written order that imposed the relevant development restriction and shall certify that the restriction was not in the original plans submitted by the applicant to the agency, but was either offered in response to the agency's concerns expressed on the record or was unilaterally imposed by the agency.
- 2607 OFF-SITE COMPLIANCE**
- 2607.1 The Board of Zoning Adjustment is authorized to permit some or all of the set aside requirements of § 2603 to be constructed off-site on property owned by the Applicant upon proof, based upon a specific economic analysis, that compliance would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

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

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

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

2607.3 The requirement of 2607.2 (a) may be waived upon a showing that the Applicant, after good faith efforts, was unable to locate properties within the same census tract or that the costs to purchase and develop available properties would render both the inclusionary and off-site projects economically infeasible.

2607.4 Inclusionary units constructed off-site shall not be counted toward any set aside requirement separately applicable to the off-site development pursuant to § 2603.

2607.5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land

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

- 2607.6 The covenant shall bind the owner and all future owners of the off-site development to:
- (a) Construct and reserve the number of inclusionary units allowed to be accounted for off-site in accordance with the plans approved by Board and the conditions of the Board's order;
  - (b) Sell or rent, as applicable, such units in accordance with the provisions of this chapter and the Act for so long as the off-site development remains in existence;
  - (c) Neither apply for nor accept any development subsidies from federal or District government programs established to provide affordable housing;
  - (d) Acknowledged that the owners are legally responsible for the set aside requirement accepted as if the requirement had been imposed directly on the off-site development; and
  - (d) Not request special exception or variance relief with respect to the obligations accepted; or its own obligations under this chapter.
- 2607.7 Upon the recordation of the covenant, the set aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this chapter and the Act.
- 2607.8 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.
- 2608 APPLICABILITY DATE**
- 2608.1 The provisions of this chapter shall become effective \_\_\_\_ days following the issuance of the first purchase/rental schedule or the publication date in the *D.C. Register* of Zoning Commission Order \_\_\_\_, establishing the Inclusionary Zoning Overlay, whichever is the last to occur.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Acting Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N.W., Washington D.C. 20001. Comments must be received not later than forty-five (45) days after the publication of this notice in the *D.C. Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.