

THE JAIR LYNCH COMPANIES
REAL ESTATE DEVELOPMENT SERVICES

VIA HAND DELIVERY

Ms Sharon Schellin
Acting Secretary to the Zoning Commission
DC Office of Zoning
441 4th Street, NW, Suite 200 South
Washington, DC 20001

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RE: Case No. 04-33 –Inclusionary Zoning, Comments on the Notice of Proposed Rulemaking

Dear Ms Schellin,

The Jair Lynch Companies (JLC) believes that the future of the District of Columbia depends upon the city's ability to ensure – through the preservation and production of affordable housing – that housing opportunities exist for residents at all income levels. No single program can accomplish this goal and no single entity – public or private – can shoulder the burden alone. In this context, JLC supports passage of a mandatory inclusionary zoning (MIZ) requirement that places some of the responsibility for development of housing units affordable for households with incomes between 50 and 80 percent of area median income (AMI) on developers of market rate housing.

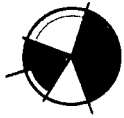
We also see the benefit of the passage of an MIZ requirement in the context of a city whose citizens and government also bear the responsibility of inventing new and efficient ways to create more mixed-income neighborhoods through other tools, such as density increases, subsidized sale of underutilized public land and greater flexibility in regulations governing use of the Housing Production Trust Fund. We offer the following comments and recommendations with the intention of making this MIZ requirement more effective and less likely to have negative impacts on developers of mixed-income housing and the overall economic resurgence in the District of Columbia.

- 1 **Set-Aside Requirements (§2603).** JLC supports the proposed mandatory inclusionary zoning requirement for by-right development. We recommend, however, that the set-aside requirement for affordable units as a percentage of bonus density be reduced to a more economically feasible level.

Inclusionary zoning should be viewed as a way to mandate new construction of **some** affordable units, but it will fail if the legislation requires an unrealistic level of affordable housing development by market rate residential developers. The proposed set-asides of 50 percent and 75 percent of bonus density will act as a disincentive to development of any bonus density units – either market rate or affordable. We are aware of analysis done on this issue by the DC Building Industry Association and believe that its recommendations, for 25 percent affordable units for any density bonus granted for concrete and steel frame construction and a 33 percent affordable requirement for any density bonus for wood frame construction, is appropriate.

ZONING COMMISSION
District of Columbia
CASE NO. 04-33
EXHIBIT NO. 210

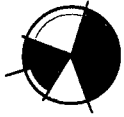
Applicability Date & Implementation Period (§2608). JLC supports a three-year transition period to allow for the education of property owners regarding the new lower land value resulting from the MIZ requirement and to minimize the negative impact on



land-owners and developers who purchased land based on a presumed development value

- 3 **Definitions (§2601).** JLC supports the use of terminology in the MIZ legislation that is consistent with that used by HUD when referring to households with incomes at either 50 or 80 percent of AMI
- 4 **Set-Aside Requirements (§2603).** JLC proposes that the legislation be revised to clarify that set-aside requirements are based solely on the type of construction – wood frame or steel and concrete frame – with the following required allocation of affordable units
 - Wood Frame Construction 50 percent at 50 AMI & 50 percent at 80 AMI
 - Steel & Concrete Construction 100 percent at 80 AMI
- 5 **Development Standards (§2605).** JLC recommends clarification of whether affordable units purchased by the Mayor are intended for re-sale or rental. Due to condominium association restrictions, the Mayor may not be able to rent out these units, under certain circumstances
- 6 **Exemption from Compliance (§2606).** JLC supports applying the MIZ requirements to PUD applications. The mandatory, across-the-board nature of MIZ, even for PUDs, achieves the goal of providing developers and investors with the clear, consistent regulatory environment they have long sought on this issue. JLC does not support applying MIZ to disposition of public land by the DC Government and quasi-governmental agencies. JLC also does not support applying MIZ requirements to Low Income Housing Tax Credit projects which already achieve clear affordable housing goals. In both instances, our expectation is that existing guidelines exceed goals outlined in MIZ legislation and should not be confused by layering on additional requirements
- 7 **Development Standards (§2605).** JLC believes that the language of the legislation may unnecessarily restrict development of projects that include both rental and for-sale residential components. Such a mix, either in multiple structures, or within a single structure, should not be excluded from the District's development as a result of this legislation
- 8 **Applicability (§2602).** JLC supports the provision requiring that all inclusionary units be leased or sold only to eligible households (at the same percentage of AMI as the original lessee or buyer) for as long as the development exists. Given the immense subsidy required to produce these affordable units, it only makes sense to ensure that the affordability of each unit is maintained as long as possible

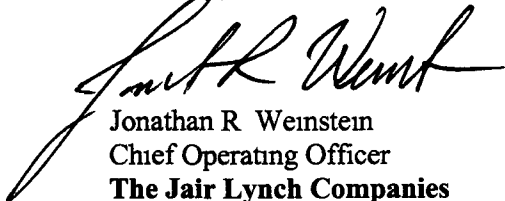
In the case of low-income homebuyers, these households can build wealth by paying their mortgages down over time, to access the equity in their homes, regardless of whether they are able to sell their homes at market rate. They will also benefit from stable, safe, clean, new housing, with a fixed mortgage payment, thereby eliminating one of the major challenges confronting low-income households and freeing them to focus on other areas that will allow the homebuyer and their families to move up the economic ladder (i.e., education, community involvement, job choice, child care, etc.)



- 9 **Bonus Density (§2604).** JLC believes that offering bonus density without an appropriate increase in height limit and lot coverage will fail to provide incentive to developers to pursue bonus density, due to the limited appeal of large, block structures with insufficient windows. Such structures are the likely result of increasing density within the same footprint and height limit. The resulting units will be less competitive.
- 10 **Exemption from Compliance (§2606).** JLC believes that MIZ legislation should exempt from compliance, as a matter of good public policy, any properties sold by non-profit service providers that have owned and operated a community facility for more than five years, if it can be demonstrated that proceeds from the sale of the property will be dedicated to the development of new facilities for the non-profit organization that will serve District residents. In particular, JLC suggests that for properties where public benefits will be served through the sale of land at higher land prices, a waiver provision be included in the legislation. For example, when a community center, health clinic, school or other community service provider sells property to support development of new, high quality facilities, the land being sold should not be subject to inclusionary zoning requirements.

This proposed exemption will allow the organization to maximize the resources available to fund development of new space by getting a higher value from the private developer purchasing the land. The alternative is that the city would need to provide significant additional subsidy for new development of these public serving facilities in order to meet the same development costs. In the context of public finance, this proposal would potentially reduce the development of affordable housing slightly, but would also reduce demand on the city's CDBG funds for community facilities.

Sincerely,


Jonathan R. Weinstein
Chief Operating Officer
The Jair Lynch Companies


Tania B. Jackson
Director of Community Policy
The Jair Lynch Companies

Cc Mayor Anthony Williams
Robert Bobb, City Administrator
Ellen McCarthy, DC Office of Planning
Linda Cropp, Chairperson of the DC Council
DC Councilmembers