

**TESTIMONY BEFORE THE COMMITTEE OF THE WHOLE RESOLUTION
SENSE OF THE COUNCIL IN SUPPORT OF INCLUSIONARY ZONING
REQUIREMENTS RESOLUTION OF 2005**

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Good afternoon, Madam Chair. My name is Ellen McCarthy; I am the Interim Director of the D.C. Office of Planning. Thank you for giving me the opportunity to testify before the Committee on the important subject of inclusionary zoning.

First I'd like to stress that the Office of Planning is aware of and greatly concerned about the serious shortage of affordable housing in the City and strongly supports efforts to increase the supply of affordable housing, through a variety of approaches, including inclusionary zoning.

What I would like to do today is to provide background on some of the issues involved with inclusionary zoning, an overview of the current status of inclusionary zoning in the District, and a timeline that the Office of Planning is pursuing to develop an inclusionary zoning program to bring before the Zoning Commission.

Overview of Inclusionary Zoning

Definition. Inclusionary zoning involves reserving a portion of residential units for lower income individuals or families. The units may be new construction or substantial renovation, and they may be rental units or sale units. Inclusionary zoning may be mandatory, or be incentive-based.

Inclusionary zoning is a useful tool for achieving more diverse communities through dispersing affordable housing, and one that OP recognizes as important in achieving the goal described in our Comprehensive Plan vision document, Growing an Inclusive City. It helps us to generate affordable units in places with strong market demand, where there are often high levels of public services available. However, it is not likely to be a major source of affordable units, and is usually not powerful enough to reach very low incomes without additional subsidies.

Applicability of inclusionary zoning for solving the affordable housing problem. We need to be clear that inclusionary zoning is only one of several tools for solving the affordable housing problem. Indeed, inclusionary zoning is not likely to be a major source of new affordable housing.

Tools that we are currently using include:

Tool	Agency with Primary Responsibility
requiring affordable housing in any city-owned land which is to be disposed of for housing	NCRC and ODMPED
direct financing of the affordability gap	DHCD
writing down the cost of financing	DCHFA
using public-private partnerships and federal funds to redevelop public housing projects, such as the HOME VI projects	DCHA

Using all of these tools, the Williams administration has produced or has in the pipeline, approximately 17,000 units of affordable housing in the last five years, over 7,000 of which represent units new to the District. The Campaign for Mandatory Inclusionary Zoning's proposal would have generated roughly 780 affordable units over the same time period. Therefore, when we are talking about trying to generate large numbers of affordable units, there are other tools that must be used to supplement inclusionary zoning.

The District already has two inclusionary zoning programs, both of which are incentive-based. We use the term "incentive-based" deliberately. People often refer to these as "voluntary" programs, which creates a misunderstanding, since they are mandatory for those who seek density increases. First, with regard to Planned Unit Developments, (PUDs), this is a zoning tool which permits a developer to seek additional density or other zoning flexibility in exchange for providing a project which is superior to what could have been achieved as a matter of right. In the desirable neighborhoods of town, especially in the vicinity of Metro stations, developers have been very interested in pursuing this approach. Since the first report of OP's Inclusionary Zoning Task Force was published, over a year ago, OP has informed developers seeking PUDs know that affordable housing is expected, as part of their package of public benefits and amenities which must accompany their application. Since OP began encouraging the inclusion of affordable units, we have achieved, or have in the pipeline, approximately 150 affordable units. In other words, if a developer seeks additional density, the program is mandatory, not voluntary, in order to obtain support from the Office of Planning to the Zoning Commission.

The second inclusionary zoning program is targeted to Reed-Cooke, an area which has experienced some gentrification. There is a provision in the Reed-Cooke Zoning Overlay District which permits an additional ten feet of height (essentially the equivalent of one floor), provided that half of the units in that bonus floor are affordable. There is also a bonus provision for affordable housing in the Uptown Arts Overlay District in the 14th and U Streets Corridors.

Major Issues in Developing an Effective Inclusionary Zoning Proposal

OP is currently working on an analysis of both mandatory and incentive-based approaches to inclusionary zoning. The approaches are both very complex and their success relies on adequate compensation. To determine the appropriate compensation OP has hired a consultant team that includes both legal and economic specialists. There are, however, a number of issues which we must address in order to create a workable large-scale inclusionary zoning program.

Legal questions. Preliminary indications from the Office of the Attorney General indicate that they find that many of the actions proposed by the Campaign's mandatory inclusionary zoning petition are beyond the legal authority of the Zoning Commission to implement, and may require specific Council action. We understand that OAG has communicated some of its concerns directly to the members of the Campaign.

Need to balance cost of providing affordable units with appropriate density incentives. As the Council's resolution notes, "in order for these requirements to work, developers must be provided with sufficient compensation in the form of density bonuses . . . and other incentives." It is important to note that most developers, especially those doing large projects, must seek investors for their projects, to provide the equity capital, in effect, the "down payment" to go along with the "debt" or funds which are borrowed from real estate lenders, much like an individual obtains a mortgage. While the debt financing entity for a home mortgage merely looks to obtain a rate related to the prime rate, investors are looking for a return on investment that is considerably higher. These investors are completely indifferent to the jurisdiction in which they invest, as long as they feel that their investment will provide the desired return. If they perceive that, due to an inadequate density bonus relative to the cost of providing the affordable housing, they can achieve a better rate of elsewhere, that's where they will invest.

If the balance between affordable units and bonus density is not struck correctly, NO housing will be produced. Not only does this cause problems in terms of meeting the District's goals of increasing our tax base, it means that no affordable units, which depend on the market rate units being constructed, will be produced.

As the previous testimony showed, in your initial hearing on this Resolution, there is no agreement at this point in time between the proponents and opponents of mandatory inclusionary zoning on the relative costs and benefits. Achieving agreement on these costs and benefits is critical, and very difficult. It is extremely complicated, since you need a different set of cost numbers for high-rise concrete construction, medium garden apartments, which are typically wood frame (known in the industry as "stick built"), and low-rise single-family detached, semi-detached and rowhouses. In addition, profitability of density bonus units will be different if the product is intended for sale or for rent, and it depends as well on the strength of the housing market in various sections of town. In addition, clearly, interest rates for construction financing and mortgages for the land and for sale units are key to understanding the financial aspects, but no one can predict what is likely to happen to interest rates.

The Office of Planning has been concerned with inclusionary zoning for quite a while. In spring of 2003, we convened a Working Group, which included members of the development community, affordable housing providers, and researchers, and collected some initial numbers. It was then, in light of the complexities I've just described, that OP realized it needed to engage a consultant to prepare a financial model to assess these issues, and to look for additional incentives and ways to streamline the process. That work is underway now. A draft of the consultant's final report is due in March of this year. In the interim, OP, the local chapter of the Urban Land Institute and the Campaign have agreed to work together to agree on a common set of numbers.

Need to identify the areas in which a density bonus is possible and desirable. As you are well aware, Mrs. Cropp, by law, zoning "may not be inconsistent" with the Comprehensive Plan. Most areas of the city are already zoned at the maximum level permitted under the Generalized Land Use Map of the Comprehensive Plan. We have used GIS to map areas in which current zoning is less than what would be permitted under the Generalized Land Use Map. The bad news is that this does not provide us with a very large area, and even some of the areas identified cannot take additional density because they are in historic districts. For example, Capitol Hill looked on the map to be a major opportunity area, since the Land Use Map designates most of it as "Moderate Density Residential", which, under the zoning guidelines, would permit up to R-5-B zoning. Yet most of the Hill is zoned R-4, and is a historic district, covered by row houses of a relatively small scale. It is hard to imagine how a 20% increase in density could be accomplished, without destroying the scale and character of the neighborhood. Even those areas which show some possibility for density increases tend to be chopped up in relatively small pieces, based on existing zone districts. And there is also the Congressionally-imposed 1910 Height Act that limits many residential building and mixed use buildings.

This leaves us primarily with areas around transit stations, and those identified as Housing Opportunity Areas and Development Opportunity Areas on the Map. That is the direction that both OP and the Campaign have been heading. Even with that approach, there are problems, however. First, it creates a patchwork quilt of areas across the city and may drive development out of the areas where it would apply in favor of areas where it does not. Second, the Housing Opportunity Areas include public housing projects and many sites east of the River in which neighborhoods have asked for for-sale housing and more market rate housing, yet, because it is perceived by lenders and developers as riskier, imposing inclusionary zoning requirements there may defeat the goal of achieving new housing and deconcentrating poverty. Also, as OP has experienced in the Upper Wisconsin Area Corridor Study, in which we proposed increasing density in the vicinity of the two Metro stations (both of which were identified as Housing Opportunity Areas) in order to achieve affordable housing, there is virulent community opposition to density increases, and a desire to be assured that density increases will not cause excessive demand on existing infrastructure, especially traffic.

Although density bonuses are thus problematic, they appear to be the only feasible incentive to compensate for affordability requirements. The PolicyLink study, on which many of the optimistic estimates of the impact of mandatory inclusionary zoning are based, did not realistically assess the limited range of incentives available. It relied on experience in other cities, and never specifically addressed the feasibility of any of the other proposed incentives in our City.

Need to provide for efficient administration and monitoring. The Resolution also recognizes the importance of the administration of inclusionary zoning being smooth and efficient. Unfortunately, there are a number of issues which make that difficult to achieve. We have heard from one of the developers that their projects in Montgomery County necessitate them hiring a specific person for each project just charged with administering the paperwork required by the County's Moderately Priced Dwelling Unit program, upon which the current mandatory proposal is based. In addition, there is considerable expense that will be involved on the District's part, to perform the necessary services. These include:

- An agency must assume the burden of pre-qualifying eligible tenants and homeowners, and keeping such lists up to date. This is difficult enough because it must be done at two levels of eligibility: 50% AMI and 80% AMI, and must also assess credit-worthiness to qualify for a mortgage for the for-sale projects.
- In addition to pre-qualifying, the agency must be responsible for the initial determination of compliance, and monitoring, on at least an annual basis, to be sure that the project continues to comply.

Two particular issues have surfaced so far. One, is the fact that, given the protections afforded to students in the D.C. Human Rights Law, and additional protections given to tenants, students with limited incomes can qualify for the affordable units, and then graduate and take a lucrative job, that far exceeds the income limits. This thereby circumvents the intent of the program, since they may not be turned out in favor of those whose need is demonstrably greater. We have heard stories of this being a relatively common occurrence.

Second, in for-sale projects, the mandatory plan, and OP's conditions for current incentive-based IZ, both limit the seller's return when the affordable unit is sold within the 20-year control period. In that case, the seller is entitled to the original purchase price, an appreciation based on the cost of living, and any additional capital improvements they have put into the unit. We have a case now, in Reed Cooke, where the community development corporation attempting to sell the affordable unit, cannot find a buyer willing to agree to those terms, because prospective home buyers want the full share of any appreciation.

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

The need to agree on appropriate levels of affordability. Many advocates of affordable housing have expressed concern that previous cases using inclusionary zoning have aimed at 80% area-wide median income (AMI), which they feel fails to respond to those with extremely low incomes. Once again, there is a balancing that must take place. The lower the incomes that inclusionary zoning attempts to serve, the fewer total units will be achieved. To serve lower incomes, the mandatory proposal provides a right of first refusal to purchase some units and provide additional subsidy to make them affordable at lower levels. However, this is one of the provisions that may go beyond the legal authority of the Zoning Commission.

The need to address various other difficult operational issues. These include:

1. how to deal with high condominium fees that may make a unit unaffordable, even with a lower cost, and the provisions proposed by the mandatory proposal; and
2. how to deal with buy out provisions, where an developer is unable to meet the requirements. The Campaign's current proposal of a buyout contribution to the Housing Production Trust Fund exceeds the legal authority of the Zoning Commission.

Next Steps

Current Timetable for Consideration of Zoning Proposals. The Campaign for Mandatory Inclusionary Zoning has submitted a petition to the Zoning Commission (ZC). The Office of Planning, as is the usual procedure, will prepare a report to the Commission, assessing the strengths and weaknesses of the proposal, and indicating whether or not OP feels that it is ready to be set down for a public hearing. In this case, the Commission members indicated to us, when OP made its status report on upcoming cases at a recent ZC meeting, that it wanted to consider the Campaign's proposal and the OP proposal at the same hearing, which is also typical procedure, to look at all the possible alternatives together. OP has developed a timetable, taking into account the work of our consultant, and the likely timeframe for resolving the questions over the costs and benefits and the other issues I've discussed today in my testimony. We expect to bring a setdown report, possibly along with an alternative proposal, to the Commission at its May meeting. If the Commission agrees to set one or both proposals down for a public hearing, that would be scheduled as soon as the legally required notice can be issued, which would probably be in July, 2005.

Thank you for permitting me to testify. I'd be happy to answer any questions you have.

Relying solely on inclusionary zoning, and the percentages that are in the proposal of the Campaign for Mandatory Inclusionary Zoning, we would have had to produce over 113,000 units of all types of housing over the same time period to produce that amount of affordable housing using inclusionary zoning.