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**STATEMENT OF THE DISTRICT OF COLUMBIA
BUILDING INDUSTRY ASSOCIATION
ON PR 15-1194
"SENSE OF THE COUNCIL IN SUPPORT OF
INCLUSIONARY ZONING RESOLUTION OF 2004"
BY JEFFREY H. GELMAN, CHAIR
DCBIA HOUSING COMMITTEE
WEDNESDAY, DECEMBER 8, 2004, 2:30 PM
DC COUNCIL CHAMBER
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.**

Good Afternoon Chairman Cropp and members of the Council I am Jeffrey H. Gelman with the law firm of Greenstein DeLorme & Luchs, P.C. I also serve as chairman of the Housing Committee of the District of Columbia Building Industry Association. DCBIA is comprised of over 400 firms representing thousands of professionals engaged in the residential and commercial real estate industry in the District of Columbia.

DCBIA strongly urges the Council to exercise extreme caution before supporting any proposals for the adoption of inclusionary zoning laws and regulations. Contrary to the assertions of advocates, the experience of other jurisdictions demonstrates that inclusionary zoning has not proved to be a consistently effective public policy for addressing affordable housing needs. Further, the direct and in-direct costs, complexities and market disincentives inherent in such zoning policy would threaten the continued revival of residential development in the District.

DCBIA recognizes the need, and is fully supportive of efforts, to increase the production and preservation of affordable housing for District residents. The

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members of DCBIA have been at the forefront in seeking increased private and public resources for affordable housing and in improving the efficiency and effectiveness of current housing programs. Over the last four years, the local housing industry, working in partnership with District Government, has reportedly added, or is in the process of adding, about 17,000 affordable housing units in our city – a notable achievement which signals the building industry’s commitment to finding the most effective and appropriate ways of increasing the affordability and quality of housing in the District.

Recognizing the continuing need for even more affordable housing, DCBIA is prepared to support a voluntary inclusionary zoning program with adequate subsidies to serve as incentives in development projects, where such incentives can be made to work. If structured to accommodate the particular challenges of applying inclusionary zoning in urban settings, such a voluntary program can contribute as an important element in a comprehensive approach to housing affordability in the District.

It is our considered judgment, however, that imposing a blanket mandatory inclusionary zoning ordinance on the District would be ill-advised and counterproductive. So-called density bonuses offered in mandatory programs often proved impractical, undesirable or insufficient in many potential developments. As a consequence, the costs of providing mandated affordable units will not be off-set, and the development will not go forward.

Without adequate subsidies and the flexibility of a voluntary program, mandatory inclusionary zoning will only constrain residential development in the District, raise market-rate housing prices, reduce land values and District tax revenues, increase the government costs of program administration and trigger potential litigation related to “taking” claims. The

net result will likely be a reduction, or at best only a negligible increase, in the production of affordable housing – at the expense of market-rate production. The full costs of mandatory inclusionary zoning are not readily apparent, but they are very real.

We are submitting a summary of the experiences of other jurisdictions which have experimented with mandatory inclusionary zoning. It represents a cautionary tale of unintended, unforeseen consequences

DCBIA stands ready to work with District Government and the Comprehensive Housing Strategy Tax Force in developing workable, cost effective programs, which can constructively address the challenges of housing affordability in our city

Thank you for the opportunity to provide these remarks

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**A DCBIA Position Paper on
Mandatory Inclusionary Zoning
in the District of Columbia
November 24, 2004**

The DC Building Industry Association ("DCBIA") strongly opposes the adoption of mandatory inclusionary zoning laws and regulations in the District of Columbia. Contrary to the assertions of advocates, the experience of other jurisdictions demonstrates that mandatory inclusionary zoning has not proved to be an effective public policy. Further, the direct and in-direct costs, complexities and market disincentives inherent in such zoning threaten the continued revival of residential development in the District with all its related fiscal impacts.

DCBIA recognizes the need to produce and preserve affordable housing for District residents. Our members have been at the forefront in seeking to improve the efficiency and effectiveness of current housing programs. Over the last four years, the housing industry, working in partnership with District Government, has reportedly added, or is in the process of adding, about 17,000 affordable housing units in our city – a notable achievement which signals our commitment to increasing housing opportunities for our residents.

Recognizing the continuing need for affordability in housing, DCBIA is prepared to support a voluntary inclusionary zoning program with adequate subsidies to serve as incentives in development projects, where such incentives can be made to work. If structured to accommodate the particular challenges of applying inclusionary zoning in urban settings, such a voluntary program can contribute as an important element in a comprehensive approach to housing affordability in the District.

It is our considered judgment, however, that imposing a blanket mandatory inclusionary zoning ordinance on the District would be ill-advised and counter productive. So-called density bonuses offered in mandatory programs often prove impractical, undesirable or insufficient in many potential developments. As a consequence, the costs of subsidizing affordable units will not be off-set, and many developments will not go forward. **Without adequate subsidies and the flexibility of a voluntary program, inclusionary zoning will only (1) constrain residential development in the District; (2) raise market-rate housing prices; (3) reduce land values and District tax revenues; (4) increase government costs of program administration; (5) and trigger litigation related to "taking" claims.**

The net result will likely be a reduction, or at best only a negligible increase, in the production of affordable housing – at the expense of market-rate production. The full costs of mandatory inclusionary zoning are not readily apparent, but they are real. Unless they are met, builders may choose not to build in the District.

The attached summarizes the experience of other jurisdictions with mandatory inclusionary zoning efforts. It represents a cautionary tale of unintended, unforeseen consequences. DCBIA stands ready to work with District government and the Comprehensive Housing Strategy Task Force in developing workable, cost effective programs, which can constructively address the challenges of housing affordability in our city.

Attachment

Inclusionary Zoning

After three decades, mandatory inclusionary zoning still remains a speculative experiment in public policy.

In taking a position on mandatory inclusionary zoning as a public policy option, it is useful to distinguish concept from implementation. As a concept, inclusionary zoning can be described as simply the reverse of exclusionary zoning – a straightforward, seemingly cost-free way to zone a degree of affordability into new residential development and, at the same time, to integrate communities economically. But when it comes time to translate that concept into a workable program, inclusionary zoning becomes inherently complex, cumbersome and costly. That may explain why nationally over three decades so few jurisdictions have adopted the policy and why the results achieved to date have been, as the Urban Land Institute put it, only “spotty.”

Three states account for the lion’s share of communities that have adopted some form of mandatory inclusionary zoning – California (the leader with about 20% of its jurisdictions having inclusionary ordinances), Massachusetts and New Jersey. In all three, despite the claims of advocates to the contrary, the inclusionary zoning production of affordable housing has been less than modest.

In the San Francisco Bay area, for example, 50 communities with inclusionary zoning have produced an annual average of 228 units since 1973, or fewer than 15 each when controlling for the length of time each program was in place. Results in the Los Angeles area have been similarly limited, with the annual production of affordable units averaging 34 per jurisdiction. In Massachusetts, over 20,000 subsidized housing units were built between 1990 and 1997, of which only 1200 were the result of inclusionary zoning programs. In New Jersey, according to the Urban Land Institute, “municipalities now depend on negotiated agreements with developers rather than mandating (inclusionary zoning) ordinances.”

Advocates often point to Montgomery County as a model of what mandatory inclusionary zoning can achieve. It’s worth a closer look. In 1974, the county enacted its Moderately Priced Dwelling Unit (MPDU) zoning ordinance, which mandates that all new residential development of 50 or more units set aside 12.5 to 15.0% of those units for sale or rent to households whose income does not exceed 65% of the AMI. As a development incentive, the ordinance allows a “density bonus” of up to 22%. Price controls are applied to the MPDU’s for 10 years on owned properties and 20 years on rentals. Over the years, MPDU mandates have produced about 11,000 affordable housing units in the county (or an average of approximately 350 units per year) – an amount about equal to that produced through other federal and state housing programs. Advocates cite these

results as a shining example of the efficacy of mandatory inclusionary zoning, but often neglect to discuss the challenges now facing the MPDU program.

The production of affordable housing in Montgomery County has slowed in recent years, as the initial larger-scale residential developments up-county have approached build-out. Density incentives have become less effective in more mature, already dense communities, where development is typically in the form of concrete high-rise construction. It is no surprise, then, that the bulk of the county's inclusionary zoning-generated affordable housing was built in Gaithersburg and Germantown and not in Bethesda. Recent experience in more urban areas of the county illuminate the difficulties of achieving MPDU mandates on-site. As a result of higher construction and operating costs and the increasing unwillingness of local communities to accept greater densities, current high-rise development normally includes a buyout of MPDU requirements to support affordable construction off-site.

From a Urban Land Institute publication: "Even the number of affordable units developed under Montgomery County's highly rated program averages about 8% of the county's total annual housing permits, and annual production is dropping every year." It would seem clear that the economics of inclusionary zoning work best in land-rich communities experiencing a surge of new development. As the staff of the Montgomery County Council recently reported. "Implementation of the MPDU program in non-suburban settings gives rise to economic and land use challenges."

Prince George's County would appear to be one such land-rich jurisdiction. It enacted a mandatory inclusionary zoning ordinance in 1991 and produced a reported 1,600 units of affordable housing over the following five years. But in 1996, the county repealed its inclusionary zoning ordinance "to end the county's image as the region's Mecca for low-cost housing." Beyond matters of image, some hardnosed calculations of tax base adequacy and county program costs no doubt also triggered the repeal decision.

Much of the academic literature on inclusionary zoning grapples with the question of costs. What are they and who pays them, when, say, an \$800,000 market-rate home is sold as a set-aside for \$250,000? A recent study by the Reason Public Policy Institute (RPPI), a California think-tank, identifies that difference in price as an "opportunity cost" imposed on the builder, landowner or market-rate buyer in some variable combination depending on site-specific factors. Essentially, RPPI regards mandatory inclusionary zoning as an attempt at price controls with all the negative market distortions that classic supply and demand economics would predict. Advocates of mandatory inclusionary zoning, on the other hand, look not at opportunity costs but at development costs and assert that any costs to the builder can be off-set by density or other development incentives.

Common sense suggests that any builder will seek to pass on any costs not recovered in the sale of subsidized units. If the builder can not foresee that possibility, the development is unlikely to get built. If the builder can, it does get built, and the landowner and/or the market-rate buyer absorb the subsidy cost. Not surprisingly, then, many have come to see mandatory inclusionary zoning as just another tax on residential development resulting in higher home prices and lower production rates.

The RPPI study estimates that in the San Francisco area, even with only its modest generation of inclusionary zoning set-asides, subsidy costs add \$22,000 to \$44,000 to the sales price of new market-rate homes in a median housing price community and more than \$100,000 in high housing price communities. Further, the study notes that among inclusionary zoning jurisdictions in the San Francisco area total housing production declined by 10,662 units over the seven years following the inception of ordinances from the production rates achieved in the prior seven years.

What is clearly difficult to dispute is that the integration of subsidized and market-rate housing does raise complex financing and marketing issues – especially in mature, built-out communities with relatively high housing prices. A study by the National Housing Conference ([Inclusionary Zoning Lessons Learned in Massachusetts](#)) observed. “A mandate applicable to all developments of twenty or more units commonly results in developments of nineteen or fewer units. Mandating affordable units in cluster developments commonly kills interest in clustering.” The study concluded “Inclusionary zoning only works when the process makes sense – financial and otherwise – to the development community.”

Often overlooked are the very real costs to the jurisdiction that arise with implementation of mandatory inclusionary zoning programs. The obvious costs are those of administration and enforcement, which are significant. Most observers, including the Urban Land Institute, readily admit that inclusionary zoning programs are inherently demanding in administration and “require the attention of dedicated, inventive public servants.” Beyond those apparent costs, there is the resulting reduction in property tax revenues, when price controls on new development lower assessed property values. An additional community cost applies when high-cost housing is not occupied by households (and tax payers) earning enough to afford high-cost market rates. This is essentially a tax base issue that impacts the inclusionary zoning goal of integrating communities economically.

Observers have noted that the two stated goals of mandatory inclusionary zoning, affordability and inclusiveness, are, in fact, contradictory. Such zoning is a public policy that trades off one goal at the expense of the other. In this view, the goal of affordability would be optimized by a maximum build-out of market-rate housing in high cost areas, in order to maximize the tax base and property values that

generate the revenues to support investment in subsidized housing. Inclusionary zoning trades off that wealth generation potential to advance another purpose at considerable cost to affordability goals.

Despite the dubious economics and lackluster results of inclusionary zoning, political pressures to do something about the affordable housing crisis have grown sharply – especially in communities experiencing rapid escalations in housing prices. Two notable examples are urban – Boston and Denver. Their approaches to inclusionary zoning are worth noting.

Boston, a city comparable in population to the District and facing some of the same practical limitations of inclusionary zoning in high-cost, urban in-fill development, has taken a relatively narrow approach with its “Inclusionary Development Policy.” It mandates a 10% affordability set aside – 5% for households earning up to 80% and 5% at 80 to 120% of the AMI. Boston is apparently focusing its policy on the unmet demand for “workforce housing” and relying on other housing assistance programs to address the needs of its lower income population. It is an approach that also reflects the generally held view that inclusionary zoning works best (or, at least, incurs fewer negative market impacts) when income limits set for subsidized buyers more closely approach the AMI.

Similarly, Denver’s Moderately Priced Dwelling Unit (MPDU) policy sets aside 10% of units in developments of more than 30 units as affordable for households earning up to 80% of the AMI, or 95% in the case of high-rise construction. Instead of density bonuses with their uncertain effectiveness, the Denver program offers direct incentive payments to the builder. Here again, the focus is on workforce housing with income thresholds approaching the AMI. As is also the case with Boston, Denver allows flexible builder off-site and in-lieu payment options.

An evenhanded reading of the past three decades of mandatory inclusionary zoning clearly shows that its benefits are a lot easier to propose than to deliver. Whatever limited successes have been achieved have come in suburban settings, when housing market conditions have been favorable. As the Urban Land Institute has observed, “Most (inclusionary zoning) programs focus on mid to large-scale new developments of medium density in suburban jurisdictions. Few have experimented with applying inclusionary requirements to other kinds of developments, especially projects typical in older cities and suburbs.” In those other kinds of developments, the competing goals of affordability and inclusiveness impose even greater strains on the practical economics of residential development. Responding to those strains, Boston and Denver have shaped their inclusionary zoning programs to directly target workforce housing with low set asides, high AMI thresholds and builder options for off-site construction and in-lieu payments.

The following questions need to be carefully answered in any evaluation of the potential benefits and costs of mandatory inclusionary zoning

1. In which jurisdictions has mandatory inclusionary zoning resulted in more than a marginal increase in affordable housing?
2. What are the similarities and differences of those jurisdictions with the District of Columbia?
3. What subsidies were provided to housing providers to offset the costs of providing affordable housing under mandatory inclusionary zoning?
4. What impact did mandatory inclusionary zoning have on the prices of market rate housing?
5. What were the costs incurred and resources expended by the governmental agencies charged with the establishment and implementation of the mandatory inclusionary zoning programs?
6. What was the impact on other housing programs?
7. What was the impact on real property values and tax revenues for the various jurisdictions?
8. How many jurisdictions have enacted mandatory inclusionary zoning and then abandoned the program, and why?
9. How do the jurisdictions that have enacted mandatory inclusionary zoning compare historically with the District, in terms of the number of previously created and preserved affordable housing units?
10. How can the District increase permitted density in any significant way without running counter to the government's long-term determination of appropriate zoning densities for its various zoning classifications.