

#04-33A

Chairman Linda W. Cropp,
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Linda W. Cropp, at the request of the Mayor, introduced the following bill, which
was referred to the Committee on _____.

To implement the Inclusionary Zoning Regulations adopted by the Zoning Commission for
the District of Columbia; amend the Office of Administrative Hearings Establishment
Act of 2001 to expand its jurisdiction to infractions of this act and its rules, to amend
the District of Columbia Administrative Procedure Act to allow for requests for relief
from the Zoning Commission's set-aside requirement to be decided without the use of
contested case procedures, including hearings, and to amend the Housing Production
Trust Fund Act of 1988 to allow for the deposit of fines collected pursuant to this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
this act may be cited as the "Inclusionary Zoning Implementation Act of 2006".

Sec. 2. Definitions

For the purposes of this act, the terms:

"Housing Production Trust Fund" means the fund established by the Housing
Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C.
Official Code § 42-2801 *et seq.*).

"Inclusionary Development" means developments subject to the Inclusionary Zoning
Program pursuant to 11 DCMR § 2602.1.

"Inclusionary unit" means a unit set aside for sale or rental to low- and moderate-
income households as required by the Inclusionary Zoning Program.

ZONING COMMISSION
District of Columbia

CASE NO. 04-33A

EXHIBIT NO. 1

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1 “**Inclusionary Zoning Program**” means all of the provisions of Chapter 26 of the
2 **Zoning Regulations of the District of Columbia (11 DCMR)**, this act, and the regulations
3 promulgated under the authority of this act.

4 “**Low-income household**” means a household of one or more individuals with a total
5 annual income adjusted for household size equal to or less than fifty percent of the
6 Metropolitan Statistical Area median as certified by the Mayor.

7 “**Moderate-income household**” means a household of one or more individuals with a
8 total annual income adjusted for household size equal to between fifty-one percent and eighty
9 percent of the Metropolitan Statistical Area median as certified by the Mayor.

10 **Sec. 3 Unlawful Acts**

11 (a) No Inclusionary Unit may be sold or leased to any person not authorized by the
12 Mayor to purchase or rent the unit, except as may be permitted by regulation.

13 (b) Except as provided Chapter 26 of the Zoning Regulations, no Inclusionary Unit
14 may be sold or leased for more than the maximum rent or purchase price established by the
15 Mayor pursuant to section 3.

16 (c) It shall be unlawful to construct an Inclusionary Development in a manner
17 inconsistent with a Certificate of Inclusionary Zoning Compliance approved by the Mayor
18 pursuant to section 5.

19 **Sec. 3. Establishment of Maximum Rent and Purchase Price**

20 (a) The Mayor may establish the maximum rent or purchase price for an Inclusionary
21 Unit based upon either the actual income of the household selected by the Mayor to lease or
22 purchase the unit or based upon a rental and price schedule.

1 (b) Rents based upon the actual income of a household shall be established so that the
2 household will not expend more than thirty percent of its annual income on rent and utilities.

3 (c) Purchase prices based upon the actual income of a household shall be established
4 so that the household will not expend more than thirty percent of its annual income on
5 mortgage payments (including principal, interest, and property insurance and taxes), home
6 owner association or condominium fees, and utilities.

7 (d) Maximum rent and purchase prices established through a schedule applicable to
8 low-income households shall be set so that a household earning fifty percent of the
9 Metropolitan Statistical Area median will expend no more than thirty percent of its annual
10 income on the applicable housing costs identified in subsections (b) and (c).

11 (e) Maximum rent and purchase prices established through a schedule applicable to
12 moderate-income households shall be set so that a household earning eighty percent of the
13 Metropolitan Statistical Area median will expend no more than thirty percent of its annual
14 income on the applicable housing costs identified in subsections (b) and (c).

15 (f) The initial rental and prices schedule shall be published in the *District of*
16 *Columbia Register*. The schedule may be modified as necessary to maintain the affordability
17 of Inclusionary Units. The initial and revised schedule need not be offered for public
18 comment through publication of a notice of proposed rulemaking, but shall not become
19 effective until its publication in the *District of Columbia Register*. Each published schedule
20 shall identify the assumptions underlying the prices and rents established, such as the
21 mortgage term and the average interest rate, taxes, insurance, condominium fees used.

22 Sec. 4. Enforcement

1 (a) A violation of this act or the rules issued under authority of this act shall be a civil
2 infraction for the purposes of the Department of Consumer and Regulatory Affairs Civil
3 Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-
4 1801.01 *et seq.*) ("Civil Infractions Act") and be grounds for revocation of any building
5 permit and certificate of occupancy for the market rate portions of the Inclusionary
6 Development. Civil fines, penalties, and fees may be imposed as sanctions for infraction of
7 section 3 of this act or any rule promulgated under its authority pursuant to the Civil
8 Infractions Act.

9 (b) In addition to such fines, penalties, and fees as may be established pursuant to
10 subsection (a), the following fines shall be imposed for violations of section 3:

11 (1) Any person found to have sold a Inclusionary Unit at a price greater than that
12 permitted by the Mayor shall pay a fine equal to the amount by which the purchase price
13 exceeded the price allowed multiplied by ten percent.

14 (2) Any person found to have rented an Inclusionary Unit for a rent greater than
15 that permitted by the Mayor shall pay a fine equal the amount by which the rent paid
16 exceeded the rent allowed multiplied by ten percent. The fine amount shall continue to be
17 paid until the owner provides proof satisfactory to the Mayor that the rental payment has
18 been reduced to the maximum allowed.

19 (3) All other violations of the Inclusionary Zoning Program are Class I Infractions
20 and subject to the fine schedule set forth at 16 DCMR § 3201.1, as that schedule may be
21 amended.

22 (c) All fines collected pursuant to this section shall be paid into the Housing
23 Production Trust Fund.

1 (d) The Attorney General for the District of Columbia may institute court
2 proceedings to enjoin violations of the Inclusionary Zoning Program.

3 (e) The District government shall not issue or reissue any license or permit, including
4 a building permit or certificate of occupancy, to any applicant for a license or permit if the
5 applicant is the owner any Inclusionary Development or Unit and found, after hearing, to be
6 in violation of the Inclusionary Zoning Program until such time as the Mayor certifies that
7 the Inclusionary Development or Unit is again in compliance.

8 Sec. 5. Certificate of Inclusionary Zoning Compliance

9 (a) No building permit shall be issued for an Inclusionary Development unless:

10 (1) The Mayor receives and approves a Certificate of Inclusionary Zoning
11 Compliance, signed by all owners of the Inclusionary Development, demonstrating that the
12 Inclusionary Development will meet the requirements of the Inclusionary Zoning Program;
13 and

14 (2) The owner of the Inclusionary Development records a covenants in the land
15 records of the District of Columbia that bind all persons with a property interest in any or all
16 of the Inclusionary Development to construct and reserve the number of Inclusionary Units
17 indicated on the a Certificate of Inclusionary Zoning Compliance, and to sell or rent, as
18 applicable, such units in accordance with the Inclusionary Zoning Program and such
19 Certificate for so long as the development remains in existence. The covenant and certificate
20 shall be made part of all future deeds and leases of Inclusionary Units and shall contain any
21 other provision required by the Mayor.

22 (b) A certificate of occupancy shall be required for each Inclusionary Unit.

1 (c) No certificate of occupancy for any market rate unit in an Inclusionary
2 Development shall be issued unless that application furnishes a written statement signed by
3 the Mayor and dated no earlier than 6 months from the date of the application, indicating that
4 the Inclusionary Project is in compliance with the Inclusionary Zoning Program and the
5 Certificate of Inclusionary Zoning Compliance.

6 (d) The Mayor may, by regulation, require the establishment of an escrow account at
7 the time that a certificate of occupancy is issued for a development permitted by the Board of
8 Zoning Adjustment to satisfy its requirements under the Inclusionary Zoning Program off-
9 site. The regulations may provide for the payment of the escrow amount into the Housing
10 Production Trust Fund if the off-site development is not constructed after a certain period of
11 time.

12 Sec. 6. Ineligibility of Students

13 Notwithstanding Section 221 of the Human Rights Act of 1977, effective December
14 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.21 (2001)), persons enrolled as full
15 time students in a college or university shall not be eligible to rent or purchase an affordable
16 unit unless the annual income of their parent or guardian would qualify under the eligibility
17 standards established by the Mayor.

18 Sec. 7. Authority of Mayor

19 The Mayor is authorized to undertake all administrative activities to implement the
20 Inclusionary Zoning Program. The activities the Mayor may undertake include:

21 (1) Establishing a fee for the review of Certificates of Inclusionary Zoning
22 Compliance submitted in accordance section 5, provided that the fee shall not exceed the
23 costs of reviewing the certificates and enforcing compliance with the program;

- 1 (2) Purchasing Inclusionary Units for sale or rental to low- and moderate income
2 households;
- 3 (3) Promulgating regulations needed to implement the Inclusionary Zoning
4 Program including amendments to the Title 12A of the District of Columbia Municipal
5 Regulations;
- 6 (4) Advertising the existence of the Inclusionary Zoning Program to the general
7 public;
- 8 (5) Accepting applications from households seeking to rent or purchase
9 Inclusionary Units;
- 10 (6) Establishing minimum income requirements;
- 11 (7) Evaluating the eligibility of households submitting applications pursuant to
12 paragraph (5), based upon the eligibility criteria established in Chapter 26 of the Zoning
13 Regulations (11 DCMR) and other relevant considerations;
- 14 (8) Establishing a list of eligible households and a selection process for
15 determining the order in which such households are chosen to rent or purchase available
16 Inclusionary Units.
- 17 (9) Establishing the process by which the owners of Inclusionary Developments
18 or Units are to notify the Mayor of the availability of Inclusionary Units;
- 19 (10) Determining the circumstances under which owners of Inclusionary
20 Developments or Units may sell or rent Inclusionary Units to low- or moderate-income
21 households that have not been selected by the Mayor;
- 22 (11) Establishing minimum size and similar standards for Inclusionary Units; and

1 (12) Determining the circumstances under which owners or renters of an
2 Inclusionary Unit may temporarily lease the unit.

3 Sec. 8. Agency Responsibilities

4 (a) The District of Columbia Housing Authority shall perform all functions and
5 duties under the Inclusionary Zoning Program as may be delegated to it by the Mayor.
6 Nothing in this section shall be construed as preventing the Mayor from delegating any or all
7 of such functions to a subordinate agency.

8 (b) Notwithstanding Reorganization Plan No. 3 of 1983, effective March 31, 1983,
9 the functions of the Department of Consumer and Regulatory Affairs shall not include any of
10 the functions given to the Mayor under this act, except such functions may be delegated to it
11 by the Mayor.

12 Sec. 9. Conforming Amendments

13 (a) Section 102 (9) of District of Columbia Administrative Procedure Act, approved
14 October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502) is amended by adding a new
15 subparagraph (e) to read as follows:

16 “(e) Request for relief from the requirements of Chapter 26 of the Zoning
17 Regulations (11 DCMR), as permitted under that Chapter; provided that such requests shall
18 be approved under such procedures as may be adopted by the Zoning Commission, which
19 procedures need not include a hearing”.

20 (b) Section 6(a) of the Office of Administrative Hearings Establishment Act of 2001,
21 effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §2-1831.03(a)), is amended as
22 follows:

23 Paragraph (8) is amended by striking the word “and” after the semicolon.

1 (1) Paragraph (9) is amended by striking the period at the end of the text; and
2 inserting the phrase “; and” in its place.

3 (2) A new paragraph (10) is added to read as follows:

4 “(10) All adjudications involving infractions of the Inclusionary Zoning
5 Implementation Act of 2006 and the rules promulgated under its authority.”

6 (c) Section 3 (c) the Housing Production Trust Fund Act of 1988, effective March 16,
7 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802) is amended by adding a new
8 subparagraph 17 to read as follows:

9 “(17) All fines collected pursuant to section 4 of the Inclusionary Zoning
10 Implementation Act of 2006.”

11 Sec. 10. Fiscal impact statement.

12 The Council adopts the fiscal impact statement in the committee report as the fiscal
13 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
14 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

15 Sec. 11. Effective date.

16 This act shall take effect following approval by the Mayor (or in the event of veto by
17 the Mayor, action by the Council to override the veto), a 30-day period of Congressional
18 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act,
19 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and
20 publication in the District of Columbia Register.