

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



January 3, 2007

Via E-Mail & U.S. Mail:

Patricia E. Gallagher, AICP
Executive Director
National Capital Planning Commission
401 9th Street, N.W., Suite 500
Washington, D.C. 20004

Re: Notice of Proposed Action – Z.C. Case No. 04-33A (Mapping of Inclusionary Zoning)

Dear Ms. Gallagher:

Please find attached a copy of the proposed rulemaking for the above-referenced case. The proposed rulemaking was published in the *D.C. Register* on December 29, 2006, for a 30-day comment period. The comment period will end on January 28, 2007. Accordingly, this case will be considered for final action at the Zoning Commission's February 12, 2007 public meeting.

The proposed decision of the Commission to approve the above-mentioned cases are referred to the National Capital Planning Commission (NCPC) for review and comment, pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D C Code Section 1-201 et seq.

If you have any questions, contact me at the Office of Zoning on (202) 727-0340.

Sincerely,

A handwritten signature in cursive script that reads "Sharon S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission

cc: David W Levy (via e-mail)
Christine Saum (via e-mail)
Marjorie Marcus (via e-mail)

ZONING COMMISSION
District of Columbia

CASE NO. 04-33A
EXHIBIT NO. 86

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 04-33A
(Text Amendment – Inclusionary Zoning – Locations)

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2001)), hereby gives notice of its intent to amend the §§ 1402.1, 1904.2,, 1999.2, 2601.1, 2602.1, 2602.3, and 2608.1 of the Zoning Regulations (Title 11 DCMR) to specify the locations where the requirements and incentives of Chapter 26, Inclusionary Zoning (“IZ”), will apply.

The proposed text would apply the IZ requirements to all Residence Districts zoned R-3 through R-5-D; all Commercial Districts zoned C-1 through C-3-C; all Waterfront Districts zoned W-1 through W-3; all properties zoned Mixed Use (CR) or Special Purpose (SP); and all overlay districts, except the Downtown Development and Southeast Federal Center Overlay Districts. Also exempted from compliance are properties located in the existing five Transferable Development Rights Receiving Zones; the W-2 zoned portions of the Georgetown Historic District; the R-3 zoned properties of the Anacostia Historic District; or the C-2-A portion of the Naval Observatory Precinct District.

Amendments to the text of the Reed-Cooke and Uptown Arts-Mixed Use Overlay District are also proposed to eliminate provisions allowing additional height and bonus density if affordable housing is provided. Since properties in those overlays will be subject to mandatory affordable housing requirements, there is no longer a need to offer incentives to achieve an equivalent result.

Because the geographic reach of the IZ program is easily described in text, and because so much of the District would be subject to its requirements, there is no need to map the subject properties within an overlay. The proposed rules therefore eliminate the references to an Inclusionary Zoning Overlay within Chapter 26.

Final rulemaking action shall be taken in not less than thirty (30) 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 as follows (new language shown in **bold and underlined**; deleted language in strikethrough):

A. Chapter 14, REED-COOKE OVERLAY DISTRICT, § 1402.1, is amended to read as follows:

- 1402.1 The maximum height permitted in the RC Overlay District shall not exceed forty feet (40 ft.) plus roof structure as defined in this title; ~~provided, that in the RC/C-2-B Overlay District, the Board of Zoning Adjustment may approve a maximum height of fifty feet (50 ft.) with appropriate setbacks from the street, plus roof structures, subject to determination by the Board that the project will provide for~~

~~the on-site construction or substantial rehabilitation of low and moderate income household units, as defined by the regulations of the D.C. Department of Housing and Community Development, of a total gross floor area equal to fifty percent (50%) of the additional gross floor area made possible by this exception.~~

B. Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, is amended as follows:

1. By amending the table following § 1904.2 to remove the reference to “Below-market housing” as follows:

	Gross floor area devoted to the bonus use	Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(a) ~~Below-market housing;~~	~~1~~	~~to 3~~

2. By striking the definition “Below-market housing” from § 1999.2.

C. Chapter 26, INCLUSIONARY ZONING, is amended as follows:

1. Section 2601, DEFINITIONS, § 2601.1, is amended by deleting the definition “Inclusionary Zoning Overlay.”

2. Section 2602, APPLICABILITY, is amended as follows:

(a) By amending § 2602.1(a) to read as follows.

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 the R-3 through R-5-D, C-1 through C-3-C, CR, SP, or W-1 through W-3 zone districts, unless exempted pursuant to § 2602.3;~~

(b) By amending § 2602.3 to read as follows.

2602.3 This Chapter shall not apply to.

(a) Hotels, motels, inns, or dormitories;

- (b) Housing developed by or on behalf of a local college or university exclusively for its students, faculty or staff;
- (c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff;
- (d) Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments, or ~~developments in R-1, R-2 and C-4 Districts.~~

(e) Properties located in any of the following areas:

- (1) The Downtown Development or Southeast Federal Center Overlay Districts;**
- (2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South receiving zones;**
- (3) The W-2 zoned portions of the Georgetown Historic District;**
- (4) The R-3 zoned portions of the Anacostia Historic District; and**
- (5) The C-2-A zoned portion of the Naval Observatory Precinct Districts.**

- (c) Subsection 2608.1 is amended to read as follows:

2608.1 The provisions of this Chapter shall become effective following the issuance of the first purchase/rental schedule¹ or the publication date in the *D C Register of Zoning Commission* ~~_____~~ **Order 04-33A**, establishing the ~~Inclusionary Zoning Overlay~~ **locations subject to this chapter**, 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, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Washington D.C 20001. Comments must be received not later than thirty (30) 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

¹ If this schedule is not published by the time the Commission considers this matter for final action, it is likely that the Commission will delete the reference to ZC Order that will contain the final text