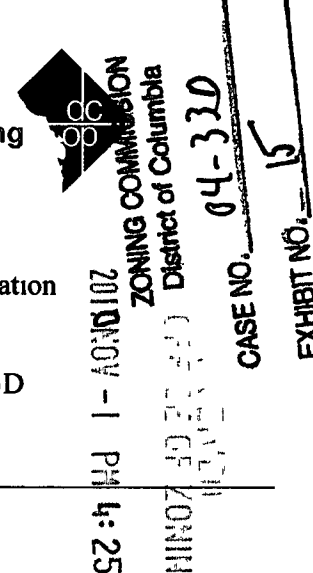


MEMORANDUM

TO: Zoning Commission for the District of Columbia
FROM: Jennifer Steingasser, Deputy Director for Development Review & Historic Preservation
DATE: November 1, 2010
SUBJECT: Supplemental, Post Public Hearing Report for Zoning Commission Case No 04-33D
 Text Amendments to 11 DCMR Chapter 26 – Inclusionary Zoning

**I. BACKGROUND**

At the request of the Zoning Commission, and based on comments from the Commission and the public at the October 21, 2010 hearing, the Office of Planning (OP) has developed revised language for the previously proposed Inclusionary Zoning (IZ) text amendments. The revisions have been developed in consultation with the Department of Housing and Community Development (DHCD) and the Office of the Attorney General (OAG). As revised, the proposed amendments would permanently exempt from IZ affordable developments financed, subsidized or funded in whole or in part by the federal or District government if they are administered by specified District agencies. The exempted developments must agree to set aside for the life of the project units that would at least equal IZ's square footage requirement. The units would be governed by their original affordability structure for the life of the project – i.e., even after the federal or District affordability restrictions have expired.

The explanation of need for the amendment and the applicable research remains the same as in OP's October 12, 2010 report

II. RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission

- Adopt on an emergency basis, the amendments set forth below to §§ 2602 and 2505 of Title 11 DCMR Chapter 26, Inclusionary Zoning, with the adjustments proposed by OP and DHCD in this report that:
 - Expand the exemption to include those projects financed, subsidized or funded in whole or in part by the federal or District government, provided they set aside for affordable units at least the minimum square footage that would otherwise have been required by IZ;
 - Require that the set aside be for so long as the project exists, as would have been required under IZ, and
 - Make minor revisions to improve the clarity of the language and the enforceability of the provisions.
- Authorize the issuance of a Second Notice of Proposed Rulemaking containing the revised text;
- Refer the revised text to the National Capital Planning Commission for the thirty-day period of review required by § 492 of the District Charter

The proposed amendments follow. Deletions to the existing text are ~~struck through~~ and additions to the existing text are **in bold**.

Subsection 2602.3 is amended by adding a new paragraph (f) so that the entire provision will 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;
- (e) Properties located in any of the following areas.
 - (i) The Downtown Development or Southeast Federal Center Overlay Districts,
 - (ii) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;
 - (iii) The W-2 zoned portions of the Georgetown Historic District;
 - (iv) The R-3 zoned portions of the Anacostia Historic District, and
 - (v) The C-2-A zoned portion of the Naval Observatory Precinct District.
 - (vi) The Eighth Street Overlay, and
- (f) **Any development financed, subsidized or funded in whole or in part by the federal or District government and administered by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority and that meets the requirements set forth in § 2602.7.**

New Subsections 2602.7, 2602.8 and 2602.9 are added

2602.7 A development exempted under § 2602.3 (f) shall be subject to the following provisions:

- (a) **The development shall set aside, for low or moderate-income households, affordable dwelling units (“Exempt Affordable Units”) equal to at least the gross square footage that would have been required pursuant to §§ 2603.1 and 2603.2. The terms “low-income household” and “moderate-income household” shall have the same meaning as given them by the federal or District funding source, or financing or**

subsidizing entity, and shall hereinafter be referred to collectively as “Targeted Households”;

- (b) The Exempt Affordable Units shall be reserved for the Targeted Households and sold or rented in accordance with the pricing structure established by the federal or District funding source, or financing or subsidizing entity, for so long as the project exists;**
- (c) The requirements set forth in §§ 2602.7 (a) and (b) shall be stated as declarations within a covenant approved by the District; and**
- (d) The approved covenant shall be recorded in the land records of the District of Columbia prior to the date that the first application for a certificate of occupancy is filed for the project; except that for developments that include one-family dwellings, the covenant shall be recorded before the first purchase agreement or lease is executed.**

2602.8 No exemption may be granted pursuant to 2602.3 (f) unless the Zoning Administrator receives a written certification from the DHCD Director that the development meets the requirements of § 2602.7 (a) and (b).

2602.9 A development exempted by § 2602.3 (f) may, nevertheless, utilize the bonus density and zoning modifications provided for in § 2604 and the zoning overlay provisions of Chapters 11 - 16, 18, or 19.

Subsection 2605.1 is repealed and other subsections of § 2605 are renumbered accordingly.

~~2605.1 — A development that provides, pursuant to federal or other District housing programs, affordable dwelling units for sale or lease may count such units towards the requirements of this Chapter, provided that all provisions of this Chapter and the Act are met.~~

A Rodgers & S Cochran, project managers

Attachment

	Description	Minimum % units affordable	Minimum term of affordability
HPTF	Long term financing program used to facilitate affordable rental and homeownership housing projects	at least 20% of units must be affordable	40 years for rental and 15 years for homeownership unless the unit is located in a census tract with a poverty rate of 30 percent or more as determined by the U.S. Census Bureau's decennial census, in which case the period shall be 10 years. The affordable term resets upon a sale.
CDBG	Neighborhood revitalization - includes residential and community facilities	51% of units must be at or below 80% AMI	Determined at underwriting - often consistent with other funding sources used on a project
HOME	Formula grants to localities that communities use to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income people.	20% units must be at or below 50% AMI, an additional 70% units must be at or below 60% AMI, and 10% must be at or below 80% AMI	New Construction - 20 years; rehabs over \$40,000 - 15 years
DMH	Financing for the acquisition, construction or rehabilitation of long-term/ permanent supportive housing units for the exclusive use of DMH consumers.	100% of units to households earning at or below 30% AMI or between 30% and 50% AMI. Restricted to DMH clients.	25 or 40 years depending on grant agreement
UNIFIED FUND	Combines revenue from "O" type activity funds to provide flexibility in the application of funds to be used for the development of affordable housing, community development, economic development, revitalization of communities, and other allowed activities.	Not set forth in establishment of Fund	Not set forth in establishment of Fund
NSP1, NSP2	Formula (NSP1) and competitive (NSP2) grants for the purpose of stabilizing communities that have suffered from foreclosures and abandonment.	Determined by grant agreement. NSP1 funds used to finance 58 units, all affordable: 16 at 30% AMI; 13 at 50% AMI; 5 at 60% AMI; 18 at 80% AMI; and 6 at 120% AMI.	15 years
CDBG-R	Additional CDBG funds authorized by the American Recovery Act of 2009 to undertake a wide range of activities intended to create suitable living environments, provide decent affordable housing and create economic opportunities, primarily for persons of low and moderate income.	See CDBG terms	See CDBG terms
TCE (ARRA), TCAP (ARRA)	TCAP is formula grant funding for capital investment in stalled Low Income Housing Tax Credit (LIHTC) projects. TCE allows developments who have been allocated tax credits in 2007, 2008 and through September 2009 to return their credits and potentially receive a cash grant in its place.	See LIHTC terms	See LIHTC terms
LIHTC (9%)	Competitive long term financing program used to facilitate affordable multifamily rental housing projects	Minimum: 20% of units for HH at or below 50% AMI - OR - at least 40% of units for HH at or below 60% AMI. This is competitive and often there is much more affordability (i.e. 100%)	Minimum of 30 years
LIHTC (4%)	Long term financing program used to facilitate affordable multifamily rental housing projects	20% of units for HH at or below 50% AMI - OR - at least 40% of units for HH at or below 60% AMI	Minimum of 30 years
HFA Bonds	Long term financing program used to facilitate affordable multifamily rental housing projects	set aside at least 20% of units for HH at or below 50% AMI or at least 40% of units for HH at or below 60% of AMI	
McKinney Act	Short tem predevelopment "bridge" loans - can be used to finance the acquisition, predev. and rehab costs associated with housing development	The developer/sponsor must set aside units for households with incomes at or below 50% of the AMI adjusted by family size	A 10 year restricted use covenant, which runs concurrently with the bond and LIHTC affordability covenants