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ID	Status	Register Category	Subject	Register Issue	Action Date
611020	Submitted to ODAI	Emergency and Proposed	Zoning Commission Second Notice of Emergency & Proposed Rulemaking: Z.C. Case No. 04-33D (Text Amendment - Inclusionary Zoning Exemption for Federal and District Funded and District Administered Affordable Housing Development)	11/26/2010 Vol 57/48	11/22/2010 10:45:13
608903	Confirmed	Final Rulemaking	Zoning Commission Notice of Final Rulemaking & Order No. 10-15 (Text Amendment to Chapter 30, Section 3004, Minutes & Transcripts)	11/26/2010 Vol 57/48	11/19/2010 15:26:09
			Zoning Commission Notice of Final		

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ZONING COMMISSION
District of Columbia

CASE NO. 04-33D

EXHIBIT NO. 18

ZONING COMMISSION
District of Columbia
CASE NO.04-33D
EXHIBIT NO.18

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
SECOND NOTICE OF EMERGENCY AND PROPOSED RULEMAKING
Z.C. Case No. 04-33D**

**Text Amendment – Inclusionary Zoning Exemption for Federal and District Funded and
District Administered Affordable Housing Development)**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to the authority set forth in section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01) and the authority set forth in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 2602, 2604, and 2605 of the Zoning Regulations (Title 11, DCMR).

The amendments exempt projects 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 from the Inclusionary Zoning (“IZ”) provisions of Chapter 26 of the Zoning Regulations. As a result of this exemption, such projects will also be exempted from the entire Inclusionary Zoning Program, which includes those implementing provisions added by the Council of the District of Columbia through its enactment of the Inclusionary Zoning Implementation Amendment Act of 2006 and by the Office of the Deputy Mayor for Planning and Economic Development through its adoption of Chapter 22 of Title 14 of the DCMR.

The amendments differ from those previously adopted on May 26, 2010 in two important respects.

The adopted emergency rules required that an exempted project must set aside 80% of its units for low- or moderate-income households. After the Commission adopted the rules, the Office of Planning revised its recommendation to propose a set aside level equal to the minimum that would have been required had IZ applied. The Commission expressed its agreement with the change during its public hearing on the amendments held October 21, 2010.

However, the Commission declined to take proposed action on the revised proposal because it agreed with several of the witnesses who contended that the minimum number of units should not revert to market rate housing after the federal or District controls expired, but should remain affordable for as long as the project existed, as would have been required under IZ. The Commission requested that the Office of Planning, the Office of the Attorney General, and DHCD provide revised text to accomplish this. This revised text, as set forth below, was adopted on an emergency basis at the Commission’s regularly scheduled public meeting held November 8, 2010 and referred to the National Capital Planning Commission for the thirty- (30) day period of review mandated by § 492 of the District Charter, D.C. Official Code § 6-641.05.

The Commission also gives notice of its intent to take final rulemaking action to adopt these amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty (30) days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

This action is being taken on an emergency basis in order to prevent the loss of several large affordable housing projects being funded by federal or District government programs. As result of conflicts between the requirements of these funding sources and several provisions contained in the Council Act or the DMPED regulations, many of these projects are being delayed to the point where their funding, and therefore their existence, is in jeopardy. None of these conflicts relate to either set-aside or affordability levels. Rather than risk the loss of affordable housing during this period of economic distress, the Commission decided to adopt this exemption on an emergency basis, believing it necessary “for the immediate preservation of the public ... welfare”. D.C. Official Code § 2-505.

The emergency rule will expire on March 8, 2011, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *D.C. Register* adopting any or all of the proposed rules, whichever occurs first.

The Zoning Regulations, Title 11 DCMR, Chapter 26, **INCLUSIONARY ZONING**, is amended as follows:

Section 2602, **APPLICABILITY**, is amended as follows:

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:
 - (1) The Downtown Development or Southeast Federal Center Overlay Districts;
 - (2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;

- (3) The W-2 zoned portions of the Georgetown Historic District;
 - (4) The R-3 zoned portions of the Anacostia Historic District;
 - (5) The C-2-A zoned portion of the Naval Observatory Precinct District; and
 - (6) 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 §§ 2602.7 through 2602.9 are added to read as follows:

- 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.

Section 2604, **BONUS DENSITY**, is amended by adding a new § 2604.4 to read as follows:

- 2604.4 A development exempted by § 2602.3 (f) may nevertheless utilize the bonus density provided for in this section and the zoning overlay provisions of Chapters 11-16, 18, or 19.

Section 2605, **DEVELOPMENT STANDARDS**, is amended by repealing § 2605.1.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.