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Executive Director
Marcel C Acosta

IN REPLY REFER TO:
NCPC File No Z.C 04-33D

DEC 06 2010

Zoning Commission of the
District of Columbia
2nd Floor, Suite 210
441 4th Street, NW
Washington, D.C 20001

Members of the Commission

Pursuant to delegations of authority adopted by the Commission on August 6,

1999, I found that the text amendments to exempt certain federal and District government funded projects from inclusionary zoning provisions would not be inconsistent with the Comprehensive Plan for the National Capital, nor would they adversely affect any other identified federal interests A copy of the

Delegated Action of the Executive Director is enclosed

Sincerely,

Marcel C. Acosta
Executive Director

Enclosure

cc: Harriet Tregoning, Director, D C. Office of Planning
Anthony Hood, Chairman, Zoning Commission

ZONING COMMISSION
District of Columbia

CASE NO. 04-33D
EXHIBIT NO. 19

**TEXT AMENDMENTS TO THE ZONING REGULATIONS
OF THE DISTRICT OF COLUMBIA
CHAPTER 26, SECTIONS 2602 AND 2605,
TO EXEMPT CERTAIN FEDERAL AND DISTRICT GOVERNMENT FUNDED PROJECTS
FROM INCLUSIONARY ZONING PROVISIONS**

Washington, D C.

Referred by the Zoning Commission of the District of Columbia

Delegated Action of the Executive Director

NOV 24 2010

Pursuant to delegations of authority adopted by the Commission on August 6, 1999, 40 U.S.C. §8724(a), and DC Code §2-1006(a), I find that the text amendments to exempt certain federal and District government funded projects from inclusionary zoning provisions would not be inconsistent with the *Comprehensive Plan for the National Capital*, nor would they adversely affect any other identified federal interests.

* * *

The Zoning Commission of the District of Columbia has taken a proposed action to approve text amendments to Chapter 26, Inclusionary Zoning, sections 2602 and 2605 of the District of Columbia Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (DCMR)). The proposed amendments would permanently exempt from the regulation's Inclusionary Zoning (IZ) provisions affordable housing developments that are 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 the 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 IZ program 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 District of Columbia's Office of the Deputy Mayor for Planning and Economic Development through its adoption of Chapter 22 of Title 14 of the DCMR.

The District of Columbia Office of Planning (DCOP) introduced the proposed text amendments at the request of the District of Columbia Department of Housing and Community Development (DHCD). The proposed amendments are to resolve conflicts presently faced by affordable housing developments being funded by federal and District programs, particularly those rental projects being funded by the United States Department of Housing and Urban Development (HUD).

The principal conflict concerns the termination of leases of households that no longer meet the eligibility requirement of the IZ program (primarily where a household's income increases beyond the point of being eligible for the affordable housing unit). Within the District, under D.C. Official Code § 6-1041.07(10)), an affordable housing tenant may lose their lease if they are no longer eligible for the unit, based on their income, so that their unit can then be made available to a household that is eligible. This allows the District of Columbia government to maintain the inventory of affordable units within the District. The HUD funding regulations, however, specifically disallow such evictions. As such, the proposed amendments would exempt from the IZ program those projects funded with federal resources, such as those subject to HUD funding regulations, as well as those being financed or otherwise subsidized under other District programs that apply affordability restrictions. However, the proposed amendment would allow such exemptions only if the project agrees, through declarations within a covenant, that units that would at least equal the IZ's square footage requirement would be set aside as affordable units for the life of the project.

Because the covenanted affordability levels will be perpetually met within projects exempted from the IZ requirements once the development is no longer bound by its funding obligation, the proposed amendments will also allow the exempted projects to benefit from the bonus densities provided for in section 2604 of the DCMR and the zoning overlay provisions of Chapters 11 - 16, 18, and 19 of the DCMR.

The proposed text amendments to the Zoning Regulations are:

- A. Section 2602, APPLICABILITY, is amended by adding a new paragraph (f) (in bold below) to subsection 2602.3, 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.

B. New Subsections 2602.7, 2602.8 and 2602.9 are added:

- 2602.7** A development exempted under § 2602.3 (t) 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.

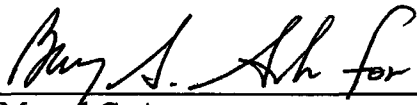
C Section 2605, DEVELOPMENT STANDARDS, is amended by repealing § 2605.1 (in bold and struck through below):

- ~~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.~~

Following final action by the Zoning Commission, DCOP will be working with DHCD on a comprehensive set of amendments to the Inclusionary Zoning Implementation Amendment Act

of 2006 and the administrative regulations to further reduce conflicts and fully leverage the IZ potential to assist in the development of affordable units. When those amendments are researched and finalized, it is anticipated that DCOP will return to the Zoning Commission with further text amendments to align all three components together

The proposed text amendments resolve conflicts between the District of Columbia's IZ requirements and separate federal and District requirements for affordable housing developments being funded by federal and District programs. Since federally-funded affordable housing programs often require a greater number of affordable units and a deeper level of affordability, the proposed text amendments do not adversely affect identified federal interests. The *Comprehensive Plan for the National Capital Federal Elements* does not address issues of affordable housing development or federal funding of affordable housing units within the District of Columbia, therefore, the proposed text amendments are not inconsistent with the Comprehensive Plan.



Marcel C. Acosta
Executive Director