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District of Columbia
Office of Planning



MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: ^{JLS}
for Eric Shaw, Director

DATE: February 25, 2016 dh

SUBJECT: ZC 04-33G Inclusionary Zoning Amendments: Recommendations Summary

This executive summary presents the Office of Planning's (OP), in cooperation with the Department of Housing and Community Development (DHCD) and Department of Consumer and Regulatory Affairs (DCRA), review and analysis of proposed amendments to the Inclusionary Zoning (IZ) Program's Title 11 Chapter 26, Inclusionary Zoning. The report presents OP's final recommendations to the District of Columbia Zoning Commission in advance of public hearings to be held on March 3, 2016.

I. Recommendations

A. Applicant's Petition

The Office of Planning does not recommend adoption of any of the Applicant's petition to amend Title 11 Chapter 26, Inclusionary Zoning due to several major factors:

- The applicant's petition to add additional height across all zones and remove lot occupancy restrictions is inconsistent with land use designations within the Comprehensive Plan and/or previous decisions of the Zoning Commission.
- Both with and without compensating bonus density the impact to residential development would delay projects, restrict supply from responding to the strong demand for market rate housing, and therefore cause a decrease in overall affordability.
- There is no opportunity in the Downtown Development overlay district (DD) and Transferrable Rights Receiving (TDR) areas to offer bonus density; imposing an IZ requirement on these areas without bonus density could threaten a residential developer's ability to compete with commercial uses.
- The Applicant's petition targets different incomes from the Inclusionary Zoning Implementation Act of 2006. For the petition to be implemented the Act would have to be amended by the DC Council.

B. OP's Recommendation

The Office of Planning recommends the Zoning Commission approve the following amendments:

Set-Aside Requirements (§ 2603.3)

- Maintain IZ's current income targets of 50% and 80% of the Median Family Income (MFI); and
 - Expand the requirement to target IZ units at both income levels to the C-2-B, C-2-B-1, C-3-A, W-2, and SP-1 zones, which currently only target 80% MFI. (§ 2603.3)

This will achieve deeper affordability down to the 50% MFI in two of the zones (C-2-B and C-3-A) seeing the most development activity.

- In these expanded zones (C-2-B, C-2-B-1, C-3-A, W-2, SP-1), establish a single set-aside standard of 8% of residential gross floor area, that does not include the requirement of 50% of the bonus density achieved by a project (new § 2603.2 (b)).

The proposed single set-aside standard is necessary due to the combined impacts of the deeper affordability requirement and administrative changes in the way the District sets IZ housing costs and rents. The following table shows a comparison of the current requirements for the expanded zones and recommendation.

| Zones | Current IZ | Proposed IZ Amendment |
|---|--|--|
| C-2-B and C-2-B-1 C-3-A W-2 SP-1 | <u>Set-Aside Area:</u> Greater of 8% of the gfa being devoted to residential use or 50% of the bonus density utilized | <u>Set-Aside Area:</u> 8% of the gfa being devoted to residential use |
| | <u>Targeted Eligible Income:</u> 100% at 80% MFI | <u>Targeted Eligible Income:</u> 50% at 50% MFI 50% at 80% MFI |

Effective Date (§ 2608)

- Establish an effective date for the amendments of six months from the date of the Zoning Commission decision.

Voluntary Participation (§ 2602.1)

- Enable voluntary participation in the IZ program where it would not otherwise be required. Recent developer interest suggests that under certain conditions developers are willing to meet IZ’s affordability requirements in exchange for the bonus density, even when they are not required to do so. This step will expand the overall production of affordable units.

For-Sale Flexibility and Greater Affordability (new § 2603.11)

Provide flexibility for a developer to provide 20% less of the required gross floor area of for-sale units at 50% Median Family Income (MFI) instead of the full requirement at 80% MFI. This enables a developer to respond to market conditions of their site that make price restricted IZ ownership units difficult to sell such as when the prices of existing market units are close to the IZ prices for a comparable unit.

Expand Mayor’s Right to Purchase (§ 2603.5)

- Amend § 2603.5 to expand the Mayor’s right to purchase a minimum of one unit and up to any number of IZ units agreed upon by the developer.

The current provision limits the Mayor to a purchase of “up to 25% of inclusionary units.” In smaller projects, it does not allow the Mayor to purchase a unit unless there are at least four units. The amendment will permit purchase by the Mayor, or assignee, of an IZ unit regardless of the number of units or when the developer agrees to sell more. This facilitates the District when it may need to step in due to foreclosure or some other condition that threatens the unit’s

affordability. It would also expand the right to purchase an IZ unit to reach deeper affordability than that targeted by the IZ program.

Flexibility and Coordination with Administrative Regulations

The administrative regulations are administered by DHCD and they cannot permit certain flexibility unless the zoning regulations authorizes the flexibility. The two regulations must be synchronized in this regard. The following two recommendations are intended to enable flexibility to be permitted through the administrative regulations:

- Amend §§ 2607 to permit off-site flexibility as an *administrative* matter of right provided the off-site provision is within 2,640 feet (one-half mile) of the on-site requirement and results in 20% more gross floor area set-aside for IZ units.

The provisions would increase the program's overall flexibility when the deeper affordability requirements may negatively impact a project while maintaining the goal of neighborhood diversity. The flexibility would require an additional 20% of gross floor area be set-aside for IZ units thus leveraging more affordable units.

- Amend §§ 2600.2 and 2606 to permit flexibility in targeted MFI households when units have remained unoccupied for an extended period; or when increases in fees make units either unaffordable to target households or when they have a significant negative impacts on the appreciation an IZ unit owner is permitted to receive.

This language enables the administrative regulations the flexibility to address a unit that has been vacant for an extended time. It would allow a 50% MFI unit to be occupied by a household that exceeds 50% of the MFI up to a household earning 80% MFI. The unit's 50% MFI prices or rents would remain in effect; only the pool of potential occupants would be expanded.

Section 2606 would establish the Zoning Commission as the forum for considering the relief for a eligible owner of an IZ unit when the ownership fees rise significantly and threaten the viability of the IZ unit.

Other Recommendations:

- Technical corrections:
 - Include a reference to the Hill East (HE) zones; 11 DCMR § 2807 confirms HE zones are subject to IZ requirements but there is no corresponding language in 11 DCMR Chapter 26, Inclusionary Zoning; (§ 2603)
 - C-2-C zone was included in the zones approved for an additional ten feet of height to accommodate the bonus density but the zone was inadvertently not listed and was mistakenly identified as being allowed an increased lot occupancy (§ 2604.2);
 - Replace “steel and concrete frame construction” with “Type I construction as defined by the D.C. Building Code” (§ 2603)
- Clarifications:
 - Clarify when IZ is applicable vis-a-vis additions (§ 2602.1) and what is used to calculate the set-aside requirement;
 - Define how projections and cellar space affect the calculations (new § 2603.12);
 - Add a definition of a bedroom and Maximum Resale Price (MRP), and update terminology from the Area Median Income (AMI) to the Median Family Income (MFI) to be consistent with the US Housing and Urban Development (§ 2601.1);

- Include floor area gained through approved variances within the IZ calculation (new § 2604.4)
- Clarify “quality of interior amenities”
- Permit IZ units to locate only in new additions when the existing building is occupied (new § 2605.7)

The proposed text amendments in this report reflects the current zoning citations for references. OP will work with the Office of Attorney General in finalizing the text as proposed by the Commission. The proposed action text will also reflect the zoning format effective September 6, 2016.

In addition to this report OP will be filing technical appendices relative to the economic modeling and other analyses.

II. Context of Inclusionary Zoning

The following discusses the five core components that can be adjusted to improve affordability, mitigate impact on land values, and improve efficiency of the Inclusionary Zoning program.

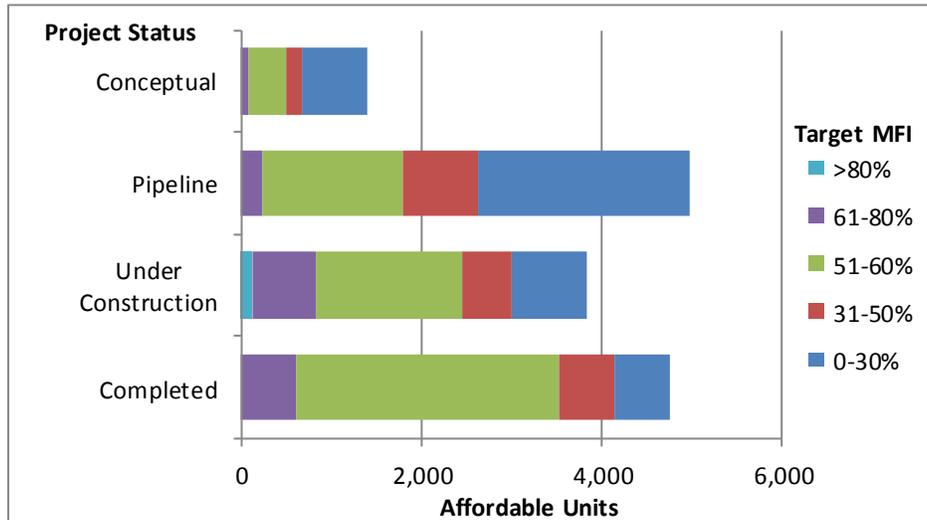
1. A Minimum Percent Set-Aside (ZC);
2. Target Median Family Incomes (ZC);
3. Compensating Bonus Density (ZC);
4. Establishing Housing Costs (DHCD); and
5. Administrative Processes (DHCD).

It is important to consider how all five of these core components interact to create a strong, efficient and productive program. The Zoning Commission has the primary responsibility for establishing the percent of units required to be set aside, the target incomes and the compensating bonus density. The Department of Housing and Community Development has the responsibility for the administrative regulations and establishing housing cost. Housing costs and the administrative process are critical to a properly balanced program that achieves affordable units without impacting the economic feasibility of projects. Establishing the correct housing costs can serve a broad range of households, and improve the marketability of the units to help speed the occupancy process.

A. Policy, Administration and Housing Costs

This discussion explains how the recommendations of OP will interact with the administrative regulations of DHCD. There are many affordable housing tools the District uses to serve low to moderate income households. However, IZ is one of the few tools that targets households earning between 60% and 80% of the MFI. In fact only 11% of subsidized units in the District’s Affordable Housing Database tracker target that income range. OP determined that 39% of households, or approximately 10,000 renting and owning households in that income range, are housing cost burdened in the District.

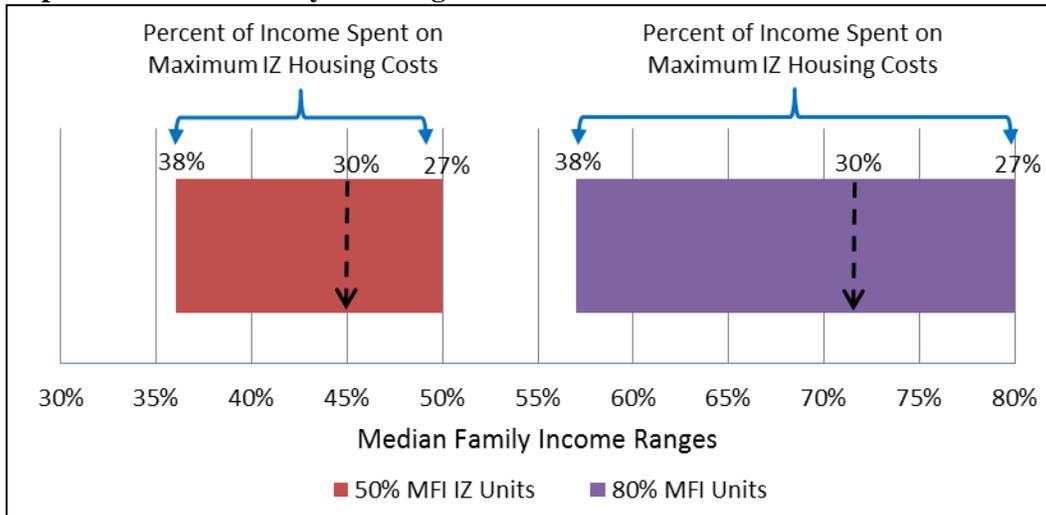
Affordable Units by Project Status and MFI



Source: DHCD

In 2006, the initial IZ balance between bonus density and affordability assumed housing costs at 30% of the income limit with adjustments for utilities, condominium fees and other expenses. This means that many IZ households are burdened by the rent, which has contributed to the slow pace of lease up. Research found that most IZ programs set rents slightly below what the target incomes can afford in order to broaden the range of households that can be served. Going forward, DHCD will set rents using 27% of the income limit by holding rents constant over the next several years as the MFI rises. Over time this will broaden the range of households served by the program. The figure below illustrates the impact of this change.

Depth of IZ Affordability: Housing Costs at 27% of Income Limit



Source: DHCD

The combination of maintaining the 50%-80% MFI split, applying it to the C-2-B, C-2-B-1, C-3-A, W-2, and SP-1 zones and the administrative efforts of DHCD to hold rents constant will achieve deeper affordability while minimizing the impact on residential development.

B. Proposed Alternatives Summary

Three proposed alternatives were advertised for the public hearing. One submitted by the Petitioner and two alternatives proposed by OP. All three touch upon the five major components of the IZ program in one way or another. In general the petitioner’s proposal would 1) increase the required percent of units to 12%, 2) shift the income targets based on whether a project is rental or ownership; 3) seek significantly lower incomes, and 4) applies IZ to areas of the District where housing must directly compete for land with office development.

OP proposed one alternative which would target households incomes by tenure and a second alternative which would maintain IZ’s current structure but expand the number of zones that would have to provide IZ units at both 50% and 80% of the MFI. The table below provides a side-by-side comparison of the three proposed alternatives.

Side by Side Comparison of Applicant and OP Proposed Amendments

| | Current IZ | Applicant’s Proposal | OP’s 1A Proposal (Revised) | OP’s 1B Alternate |
|-----------------------------------|---|--|---|---|
| Income Targets | 50% and/or 80% MFI ¹ depending on zone, regardless of tenure | Targets 50% MFI for Rental; 70% MFI for ownership | Adds C-3-A, C-2-B, SP-1 & W-2 to zones required to do both 50% and 80% of the MFI | Targets 60% MFI for Rental; 80% MFI for ownership |
| IZ Percent of Project | Greater of 8%-10% of residential square footage or 50%-75% of the bonus density achieved* | Increases requirement to 12% of a residential square footage for all projects. | Reduce requirement to 8% of residential use; eliminate 50% of bonus density requirement | No proposed changes |
| Bonus Density & Building Envelope | 20% Bonus density plus many changes to height and lot occupancy | Increases bonus density and significant increases to height and lot occupancy | No additional density, some proposed changes to height | No additional density, some proposed changes to height |
| Setting Housing Costs | 30% of income limit for unit; ownership adjustments for interest rates and condo fees; utilities for rental | 25% of income limit for unit | Adjust rents to 27% of housing costs | 30% of income limit for unit; ownership adjustments for interest rates and condo fees; utilities for rental |
| Comments | DCBIA believes bonus density not sufficiently available | Applicant seeks greater affordability and expands to Downtown. Significant negative impacts to land values | Preferred by DCBIA, but with adjusted income targets 50/50 split between 65% & 80% MFI | Preferred by applicant. DC BIA very concerned about impact to rental without additional incentives |

* Varies by zone and construction type; 75% of maximum bonus density equals 12.5% of the residential square footage.

III. Technical Analysis

A. Comprehensive Plan

OP’s review of the Comprehensive Plan (Comp Plan) found there is very limited opportunity to increase bonus density to help balance the impact on project revenues from deeper affordability. This is due to the inability to offer additional height in almost any zone without running into potential conflicts with the Comp Plan. OP compared the policy guidance with the zone district regulations where the CR, C-1, C-2-A, C-2-Bs, C-3-A, W-1, W-2, W-3, and SP-1 districts occur. OP found that each have between five and 17 different designations on the Comp Plan’s Future Land Use Map (FLUM) that range from “High” to “Medium” to “Moderate” to “Low” levels of intensity of mixed-use, commercial or residential development. Each FLUM designation generally corresponds to a certain range of heights.

For example, the C-2-B districts abut established residential neighborhoods and as a result, frequently include a “Moderate” or “Low” FLUM designation. This typically guides matter of right development to heights of no greater than 65 feet in the C-2-B zone. C-2-B permits a matter of right height of 70’ with IZ bonus. The addition of 10’ or an additional story to these districts would result in building heights of 80’ as a matter of right. Buildings of such heights could be inconsistent with the FLUM designations.

B. Economic Impact

A central reason to OP’s recommendation to maintain the 50% and 80% MFI targets, but expand the number of zones required to provide units at both 50% and 80% MFI, was due to the economic impact analysis developed to test the potential changes. Developed through extensive discussions of a working group (Section V), which included the petitioner and developers, the model tests the impact to land values of the proposed changes. This technique was chosen to test the relative impacts that the proposed changes might have on rental versus ownership projects.

The results suggested that for the zones tested the combined impacts of Applicant’s proposal on required percent of set-aside units, income targets and housing costs could potentially drive down land values anywhere from negative 6.6% to as much as negative 83% depending on the zone. In some cases the height and bonus density actually contributed to the negative impact because it required more expensive steel and concrete construction to access the bonus density. This level of impact could significantly delay projects and cause a reduction in new competitive supply and harm overall affordability.

OP’s proposal to shift IZ income targets by tenure of the project (Option 1B) did actually help condominium projects because many zones went from targeting both 50% and 80% MFI to just targeting units to 80% MFI and the benefit to land values ranged from positive 3.7% to 7.3%. However, rental projects saw impacts to land values of negative 2.4% to as high as negative 8.7%. The analysis included the benefits of parking reductions from the Zoning Regulations Review process but only three zones retained a positive impact after the deeper affordability was included. The primary economic concern for rejecting Option 1B was the disparate impacts on rental versus ownership projects. Rental housing plays an important role in the District’s housing supply and there is significant concern about the impact of Option 1B on rental development.

The table below focuses on the impacts of OP’s Option 1A which expands the zones required to target both 50% and 80% MFI. The table focuses on the C-3-A and C-2-Bs of the OP proposal because they had significant capacity for future growth; OP estimates the C-3-A zone has capacity for 23.2 million square feet of development capacity, and C-2-B zones have 8 million square feet of capacity.

The table shows, from left to right, the cumulative impacts of upcoming changes in parking, requiring deeper affordability in the C-2-B and C-3-A zones, removing the requirement tied to bonus density and the subsequent change to income as rents are held constant over the next several years as the MFI rises highlighted in red. For example, the C-3-A saw a reduction in the parking requirement that enabled the tested project of 100 units to go from two levels of parking to one. This potentially increases the land values by 12.5%. The amendment to require projects in the C-3-A to split IZ units between 50% and 80% adjusts the savings from parking reductions to 5.4%. Removing the IZ requirement based on bonus density helps cumulative benefits to land values back up to 7.2%. Note the C-2-B did not receive the same benefits from parking reductions. Finally, holding IZ rents constant as the MFI rises reduces the percent of income spent on housing from 29% to 28%. DHCD’s final goal is reach a level where the percent of income spent on rents is 27% of income.

Option 1A (Revised) Impact on Land Values of Rental Development

| | New Parking Change | Split Units 50/80 | Less % Bonus | 29% Income | 28% Income |
|--------------------|--------------------|-------------------|--------------|------------|------------|
| C-2-B ¹ | 0.0% | -5.9% | -4.5% | -5.4% | -6.2% |
| C-3-A | 12.5% | 5.4% | 7.2% | 6.1% | 5.1% |

The model assumes the savings from the parking reduction is fully captured by land values. The new parking standards were an important step toward achieving broader affordability across the District by enabling previously marginal sites to become economically feasible and increase the overall supply of housing.

IV. Conclusion

The goal of OP and DHCD’s approach to these recommendations was to:

- Improve the functioning of the IZ program;
- Target appropriate affordability gaps in District’s housing supply;
- Achieve greater production of affordable units; and
- Minimize the impacts of potential changes on the economics of residential development

There are significant reasons for keeping IZ’s current policy of splitting the affordability requirement between 50% and 80% of the MFI. These include:

- There is demand for affordable housing at the 80% income band and IZ is one of the few programs that target this income range;
- Adjustments to the rent schedule separate from any zoning change can:
 - Serve to reduce households burdened by IZ rental costs,
 - Increase the depth of affordability to serve households with lower incomes,
 - Improve the marketability of the IZ units to improve administration by helping to reduce the time between lottery and occupancy, and
 - Be accomplished in a way that minimizes the impact on market rate residential development compared to a sudden change from 80% to 60% MFI;
- The ability to reach 50% MFI households which represent a great need particularly for ownership opportunities;
- The percentages are consistent with the legislative Act and the administrative process will not need to be significantly overhauled; and
- The changes recommended achieve deeper affordability in several of the most productive zones and only require approval by the Zoning Commission.

The program is still in its infancy with significant production only achieved in the past year or so. DHCD has made dramatic strides in improving administration, and continue to make improvements and should be accomplished before a major shift in policy is enacted.

¹ Five feet additional height triggers change in construction type

OP is about to start a Comprehensive Plan update process expected to extend over the next 18 months. The update presents an opportunity to review how the program performs with each additional project and to discuss and address many of the issues identified in this report with regards to affordability, density, and growth of the District. OP fully expects results from the Comprehensive Plan update will suggest further opportunities to strengthen and improve the IZ program.

V. Working Group Participants

Representatives from the following organizations have participated in the process including:

Income Targets and Housing Costs

CNHED
Housing Counseling Agency
City First
WC Smith
DHCD
Dante Partners
Leslie Steen
Manna, Inc
UrbanPace
10SquareTeam
Saul Ewing
Coalition for Smarter Growth

Bonus Density and Economic Impact Analysis

Concordia
EYA
Bozzuto
WC Smith
DHCD
Dante Partners
JBG
Community Three Partners
10SquareTeam
Somerset Development
Saul Ewing
Coalition for Smarter Growth
Hines Development

Art Rodgers, Case Manager
JLS/ES

APPENDIX 1

PROPOSED AMENDMENTS TO CHAPTER 26, INCLUSIONARY ZONING

Amend the following sections of Chapter 26 as follows:

2600 GENERAL PROVISIONS

2600.2 It is the intent of the Zoning Commission to promulgate only such regulations as are necessary to establish the minimum obligations of property owners applying for building permits or certificates of occupancy under an Inclusionary Zoning Program. All other aspects of the program, including the setting of maximum purchase prices and rents, the minimum sizes of the units, the selection and obligations of eligible households, **administrative flexibility to ensure occupancy** and the establishment of enforcement mechanisms such as covenants and certifications shall be as determined by the Council and Mayor of the District of Columbia.

2601 DEFINITIONS

2601.1 When used in the Chapter, the following terms and phrases shall have the meanings ascribed:

Bedroom – a room with immediate access to an exterior window and a closet that is designated as a “bedroom” or “sleeping room” on construction plans submitted in an application for a building permit for an Inclusionary Development.

Maximum Resale Price (MRP) – As defined by the formula found in Title 14 Chapter 22.

Maximum Resale Price (MRP) – As defined by the formula found in Title 14 Chapter 22.

2602 APPLICABILITY

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 R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, **HE** and W-40 through W-3 Zone Districts, unless exempted pursuant to § 2602.3; **and**
- (b) **Are new construction or additions of gross floor area that would result in Have-ten (10) or more dwelling units constructed concurrently or in phases on a lot or; on contiguous lots, including those divided by an alley, if the lots were under common ownership, control or affiliation within one year prior**

to the application for the first building permit (~~including off-site inclusionary units~~); and

- (c) To existing gross floor area of residential use or converted to residential use where the new gross floor area described in 2602.1 (b) represents an increase of fifty percent (50%) or more gross floor area to an existing building; or ~~Are either:~~

~~(1) New multiple dwellings;~~

~~(2) New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or~~

~~(3) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more.~~

- (d) Any semi-attached, attached or multi-family residential development not described in §§ 2602.1 (b) or (c) that agrees to the requirements § 2603 and other requirements of this chapter provided, the square footage set aside achieves a minimum of one unit, and all other requirements of this chapter are met. Properties located in the areas identified by § 2602.3 (e) (3-6) may not use the modifications to height and lot occupancy, or minimum lot area or width.

2602.2 A new development with less than ten (10) dwelling units shall become subject to this Chapter upon the filing of an application for a building permit to add one or more dwelling units to the development within a ~~two~~ three-year period after the issuance of the ~~last certificate of occupancy~~ first building permit, if the construction for which application has been filed would result in the development having ten (10) or more dwelling units.

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

- (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; and
 - (5) The C-2-A zoned portion of the Naval Observatory Precinct District.
 - (6) The Eighth Street Overlay.
- (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.

- 2602.4 Except as provided in §§ 2602.5, 2602.10, 2603.5, 2603.6, and 2607.1(c) or the Act, all inclusionary units created pursuant to this chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists.
- 2602.5 An owner/occupant of an inclusionary unit may not sell the unit at a price greater than that established by the Mayor pursuant to § 103 of the Act unless the price is offered by the Mayor or a Housing Trust authorized by the Mayor.
- 2602.6 No eligible household shall be offered an inclusionary unit for rental or sale at an amount greater than that established by the Mayor pursuant to § 103 of the Act.
- 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 **for targeted households earning no greater than eighty percent (80%) of the MFI** (“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~~ ~~H~~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.

2603 SET-ASIDE REQUIREMENTS

- 2603.1 An inclusionary development for which ~~the primary method of construction~~ does not employ **Type I construction as defined by the D.C. Building Code** ~~steel and concrete frame structure~~ **to construct the majority of dwelling units** located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of the gross floor area being devoted to residential use or 75% of the bonus density ~~being utilized~~ for inclusionary units.
- 2603.2 An inclusionary development **which employs Type I construction as defined by the D.C. Building Code** ~~of steel and concrete frame construction~~ **to construct the majority of dwelling units** located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, SP, USN, W-2, or W-3 Zone District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use or fifty percent (50%) of the bonus density ~~utilized~~ for inclusionary units.
- 2603.3 Except as provided in §§ 2603.10 and 2603.11, inclusionary developments located in R-~~23~~ through R-5-~~DE~~, C-1, C-2-A, **C-2-B, C-2-B-1, C-3-A, SP-1**, StE, W-0, W-1 and **W-2** Districts shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (50%) of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.
- 2603.4 Except as provided in § 2603.11, developments located in CR, C-2-C, ~~through~~ C-3-C, USN, ~~W-2 through~~ W-3, and **SP-2** Zone Districts shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households.
- 2603.5 The Mayor or the District of Columbia Housing Authority shall have the right to purchase ~~up to~~ **the greater of one IZ Unit or** twenty-five percent (25%) of **for-sale** inclusionary units, **or any percentage agreed to by the owner of the**

Inclusionary Development ~~in a for-sale inclusionary development~~ in accordance with such procedures as are set forth in the Act.

- 2603.6 Notwithstanding § 2603.5, nothing shall prohibit the Mayor or the District of Columbia Housing Authority to acquire title to inclusionary units in a for-sale inclusionary development if any of the following circumstances exist:
- (a) There is a risk that title to the units will be transferred by foreclosure or deed-in-lieu of foreclosure, or that the units' mortgages will be assigned to the Secretary of the U.S. Department of Housing and Urban Development; or
 - (b) Title to the units has been transferred by foreclosure or deed-in-lieu of foreclosure, or the units' mortgages have been assigned to the Secretary of the U.S. Department of Housing and Urban Development.
- 2603.7 An inclusionary development of steel and concrete frame construction located in a StE District shall devote no less than eight percent (8%) of the gross floor area being devoted to residential use in a StE District.
- 2603.8 When dwelling units are located in cellar space or enclosed building projections extending into public space, then the entire development's residential floor area within those spaces shall be included for purposes of calculating the minimum set-aside requirements of §§ 2603.1 and 2603.2**
- 2603.9 The square footage set aside for sale to eligible households earning equal to or less than 80 percent of the MFI may be reduced by 20 percent provided all the units are set aside to households earning 60 percent of the MFI.**
- 2603.10 An inclusionary development that results from a conversion of a one (1)-family dwelling or flat to an apartment house in the R-4 Zone District for four (4) or more dwelling units approved by the Board of Zoning Adjustment shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households.
- 2603.11 Notwithstanding §§ 2603.3 and 2603.4, one hundred percent (100%) of inclusionary units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible low-income households. Inclusionary units set aside pursuant to this provision shall be set aside independently from the standard otherwise applicable in this subsection.

2604 BONUS DENSITY

2604.1 Inclusionary developments subject to the provisions of this chapter, except those located in the StE District, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, *et seq.* (2001 Ed.).

2604.2 Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the bonus density:

| Base Zone | Matter-of-Right Zoning Constraints | | | IZ Zoning Modifications | |
|------------------|------------------------------------|---------------|-----------------|-------------------------|-------------------|
| | Lot Occupancy | Height (feet) | FAR | Lot Occupancy | Height (feet) |
| R-5-E | 75% | 90 | 6.00 | 90% | 90 |
| CR | 75% | 90 | 6.00 | 80% | 100 |
| C-2-A | 60% | 50 | 2.50 | 75% | 50 |
| C-2-B | 80% | 65 | 3.50 | 80% | 70 |
| C-2-C | 80% | 90 | 6.00 | 90 80% | 90 100 |
| C-3-A | 75% | 65 | 4.00 | 80% | 65 |
| C-3-C | n/a | 90 | 6.5 | n/a | 90 100 |
| W-1 | 80% | 40 | 2.50 | 80% | 50 |
| W-2 | 75% | 60 | 4.00 | 75% | 80 |
| W-3 | 75% | 90 | 6.00 | 80% | 100 |
| SP-1 | 80% | 65 | 4.00 | 80% | 70 |
| SP-2 | 80% | 90 | 6.00 | 90% | 90 |

2604.3 Inclusionary developments in R-2 through R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

| Base Zone | IZ Zoning Modifications | | |
|-------------------|--------------------------|---------------------|--------------------------------------|
| | IZ Min. Lot Area (sq ft) | Min. Lot Width (ft) | Min Lot Width (ft) Special Exception |
| R-2 Detached | 3,200 | 40 | 32 |
| R-2 Semi-Detached | 2,500 | 30 | 25 |
| R-3 | 1,600 | 20 | 16 |
| R-4 | 1,500 | 18 | 16 |

2604.4 Increases in FAR as a result of variances granted by the BZA shall be treated as bonus density for the purposes of calculating the maximum IZ requirement.

2605 DEVELOPMENT STANDARDS
 2605.1 [REPEALED]

- 2605.2 The proportion of studio, efficiency, and one-bedroom inclusionary units to all inclusionary units shall not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units.
- 2605.3 All inclusionary units shall be comparable in exterior design, materials, and finishes to the market-rate units.
- 2605.4 The interior amenities of inclusionary units (such as finishes and appliances) shall be comparable to the market-rate units, but may be comprised of less expensive materials and equipment **so long as the interior amenities are durable, of good quality, and consistent with contemporary standards for new housing.**
- 2605.5 All inclusionary units in an inclusionary development shall be constructed prior to or concurrently with the construction of market-rate units, except that in a phased development, the inclusionary units shall be constructed at a pace that is proportional with the construction of the market-rate units.
- 2605.6 Inclusionary units shall not be overly concentrated on any floor, **tenure or dwelling type including multiple-dwellings, single household dwellings, or flats of an Inclusionary Development** project.
- 2605.7 **In an Inclusionary Development subject to 2602.1 (c) or 2602.2, Inclusionary Units may be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of this chapter are met.**

2606 EXEMPTION FROM COMPLIANCE

- 2606.1 The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) would deny the applicant **an IZ Development owner** economically viable use of its land.
- 2606.2 No application **from an IZ Development owner** for a variance from the requirements of § 2603.2 may be granted until the Board of Zoning Adjustment has voted to deny an application for relief pursuant to this section or § 2607.
- 2606.3 **The Zoning Commission may grant relief from the requirements of § 2603 to an Eligible Household that owns an Inclusionary Unit on the consent calendar provided:**
- (a) **Condominium or Homeowner association fees have increased to make the unit unaffordable to other Eligible Households as defined by Title 14 Chapter 22; and**

- (b) The application for relief includes written confirmation of § 2606.3 (a) from the Director of DHCD; and
 - (1) The IZ covenant remains and the unit is sold at the Maximum Resale Price (MRP) if the income of the Eligible Household purchasing the unit does not exceed 100 percent of the MFI; or
- (d) If the IZ covenant is terminated and the unit is sold above the Maximum Resale Price, a fee equal to any net proceeds from the sale that are above and beyond the Maximum Resale Price are deposited into the District's Housing Production Trust Fund as a housing linkage defined by § 2499.

2607 OFF-SITE COMPLIANCE

2607.1 Some or all of the set-aside requirements of § 2603 may be constructed off-site to another location within 2,640 feet of the on-site property provided:

- (a) The square footage of requirement transferred off-site is twenty (20) percent greater than what would have been required at the on-site location;
- (b) All other provisions of 2607.3 and the rest of this section have been met.

2607.42 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of § 2603 to be constructed off-site **anywhere within the District of Columbia** upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

2607.23 Both administrative and BZA applications for off-site provision ~~An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:~~

- ~~(a)~~ — Is located within the same census tract as the inclusionary development;
- ~~(b)~~(a) Consists of new construction for which no certificate of occupancy has been issued;
- ~~(c)~~(b) Is at a location suitable for residential development;
- ~~(d)~~(c) Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it;

- (e)(d) Has not received any development subsidies from federal or District government programs established to provide affordable housing;
- (f)(e) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site;
- (g)(f) Will not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the BZA application; and
- (h)(g) Has not utilized bonus density beyond that provided by § 2604.1
- (h) **All dwelling units as are required to be reserved in the off-site development shall be deemed inclusionary units for the purposes of this Chapter and the Act.**

~~2607.3 — The requirement of § 2607.2 (a) may be waived upon a showing that the off-site development is owned by the Applicant, is located in the District of Columbia, and meets the requirements of § 2607.2.~~

2607.4 Inclusionary units constructed off-site shall not be counted toward any set-aside requirement separately applicable to the off-site development pursuant to § 2603.

2607.5 ~~No order granting~~ **The off-site compliance shall become effective not relieve a site of its on-site requirement** until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.

2607.6 The covenant shall bind the owner and all future owners of the off-site development to:

- (a) Construct and reserve the number of inclusionary units allowed to be accounted for off-site, in accordance with the plans approved by the Board and the conditions of the Board's order;
- (b) Sell or rent, as applicable, such units in accordance with the provisions of this Chapter and the Act for so long as the off-site development remains in existence;
- (c) Neither apply for nor accept any development subsidies from federal or District government programs established to provide affordable housing;

- (d) Acknowledge that the owners are legally responsible for the set-aside requirement accepted as if the requirement had been imposed directly on the off-site development; and
- (e) Not request special exception or variance relief with respect to the obligations accepted or its own obligations under this Chapter.

2607.7 Upon the recordation of the covenant, the set-aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. ~~All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this Chapter and the Act.~~

2607.8 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.

2607.9 Inclusionary Units resulting from the set-aside required for penthouse habitable space as described in § 2602.1(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of §§ 414.13 through 414.16 when:

- (a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;
- (b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or
- (c) The building is not otherwise required to provide inclusionary units for low income households and the amount of penthouse habitable space would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.

Amend Section 3040 as follows:

3040 FILING FEES

3040.7 No fee shall be charged for applications pursuant to § 2603.3.