Petitioner Statement in Support for
Zoning Case No. 04-33G

To the District of Columbia Zoning Commission

Anthony Hood, Chairman
District of Columbia Zoning Commission
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On behalf of the DC Campaign for Inclusionary Zoning

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ZONING COMMISSION
District of Columbia
CASE NO.04-33G
EXHIBIT NO.151

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This statement is submitted on behalf of the Campaign for Inclusionary Zoning regarding Zoning Case 04-33G.

We want to thank the Commission for its interest in this case. The District is experiencing an affordable housing crisis of historic significance. As DC's economy and population grows, housing prices rise, and low-income DC residents with stagnant wages are left struggling to pay for housing. In this environment, the District must take action to sharpen each tool in the city's affordable housing toolbox, especially inclusionary zoning, the only tool that by design creates affordable homes in high-cost neighborhoods. The DC Council and Mayor Bowser have taken important steps to tackle DC's urgent affordable housing needs, appropriating a record level of funding for affordable housing this fiscal year. The DC Council recently passed a resolution, calling for a stronger inclusionary zoning program.[1] As more and more families struggle to pay the rent, and market-rate residential construction continues at a rapid pace, the sooner inclusionary zoning is revised to work better for DC's low-income residents, the greater the impact will be.

Petitioner's Position

We ask that the Zoning Commission adopt Office of Planning's proposed Option 1B from the set-down report. Option 1B would target inclusionary zoning rental units at 60% MFI, and inclusionary zoning ownership units at 80% MFI. Presently, most production has been rentals affordable at 80% MFI, where renters are typically accommodated by the private market.

Option 1B largely achieves the goal of our original text amendment, and analysis shows it is more economically feasible, given the unavailability of additional bonus density. This proposal aligns the program with DC's affordable rental housing needs, which are concentrated in households under 60% MFI. Option 1B will increase low-income families' housing options in high-opportunity neighborhoods. It is also consistent with best practices in inclusionary zoning program design, both nationally and in the Washington region.

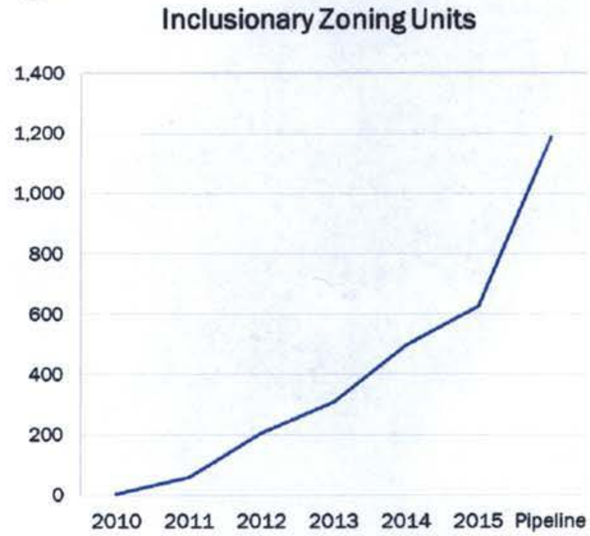
And importantly, Option 1B is supported by analysis showing that in most of the city, inclusionary zoning has given more bonus density than what is needed to offset current affordability requirements. This has created a windfall for many developments. Option 1B reclaims some of that added value for deeper rental affordability. The approach used by Office of Planning take the added value as already given over to developments and land owners, positing that any surplus value cannot be recaptured. Yet even using this approach, analysis shows Option 1B will have only a modest impact on rental developments, within the normal range of price fluctuations that are likely to be well-tolerated by the city's strong rental market.

[1] R21-0107, "Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015," Effective June 2015.

A Fast-Growing Housing Tool for Economically Diverse Neighborhoods

Inclusionary zoning production is taking off, indicating that now is the time to consider a policy realignment. Nine hundred IZ units are online or soon to be completed (**Figure 1**). Thousands more are anticipated, as inclusionary zoning works alongside the city's 25-year record high in residential construction.[2]

Figure 1.



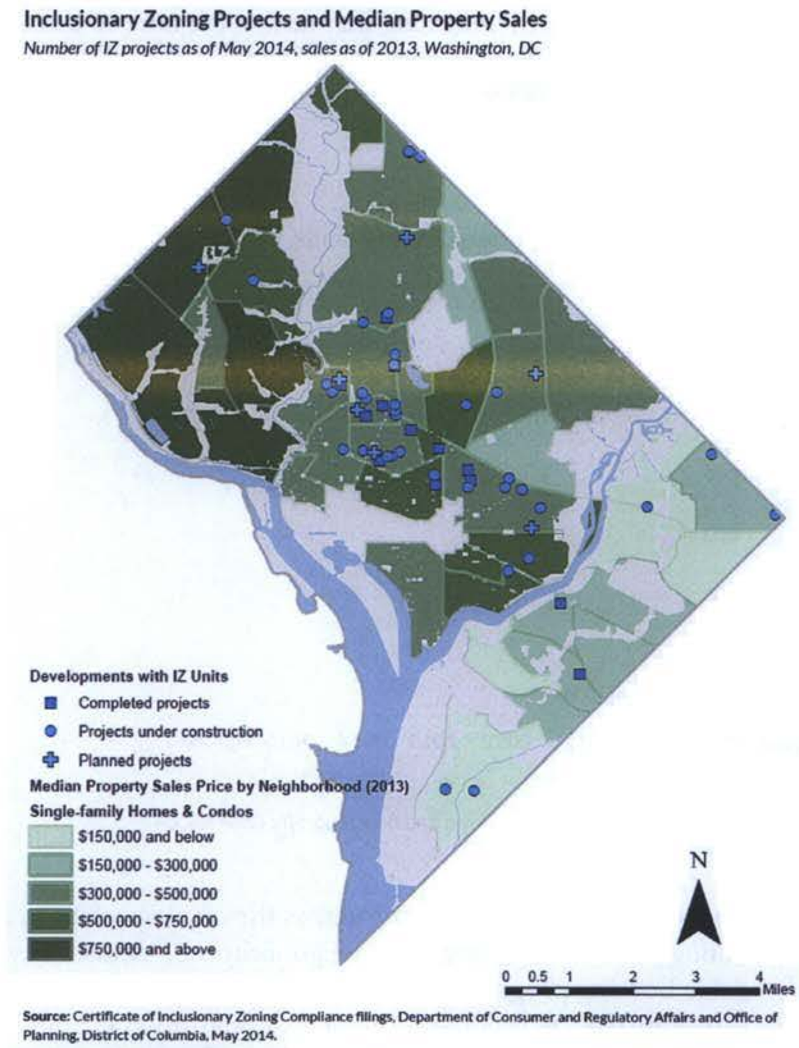
Source: Office of Planning set-down and final report for Case No. 04-33G.

Figure 2 shows that the program has produced housing across the city, especially in rapidly growing neighborhoods. By contributing to economically diverse neighborhoods, inclusionary zoning is unique among DC's affordable housing programs, and warrants special attention to ensure the potential of this program is maximized. Inclusionary zoning creates affordable homes in high-cost, high-opportunity neighborhoods, where production using our limited subsidy dollars would be nearly impossible. Inclusionary zoning expands low-income families' opportunity to live near jobs, transit, and good schools. A growing body of research, most notably from Harvard University's Equality of Opportunity project,[3] shows that improving low-income families' access to high-opportunity neighborhoods has long-term positive effects on health, family outcomes, and lifetime earnings.

[2] US Census Bureau via Federal Reserve Bank of St. Louis, New Private Housing Units Authorized By Building Permits in the District of Columbia, 1988-2015.

[3] For example, see: Raj Chetty & Nathaniel Hendren, "The Impacts of Neighborhoods on Intergenerational Mobility," April 2015.

Figure 2.



Source: Urban Institute, Affordable Housing Needs Assessment for the District of Columbia, Phase I, 2014.

Because inclusionary zoning improves the geographic diversity of the city's affordable housing stock, and provides low-income families the opportunity for geographic mobility, low-income families the opportunity to live in neighborhoods they otherwise couldn't afford, the program is a critical part of ensuring we are compliant with HUD's Affirmatively Furthering Fair Housing rule.[4] The new rule directs jurisdictions participating in HUD programs to take "proactive steps" to reduce disparities in housing choice, respond to disproportionate housing needs, and reduce patterns of housing segregation

[4] Final Rule effective July 16, 2015.

The District's Affordable Housing Needs

Option 1B ensures inclusionary zoning will serve more of those truly struggling to pay rent and get by. DC renters at 60% MFI are significantly challenged by the city's high housing costs. They also don't have access to many high-opportunity, high-cost DC neighborhoods. In fact, these households have access to only 18 of 56 District neighborhoods because of cost.[5] By contrast, renters at 80% MFI are unlikely to be severely burdened by housing costs, and largely don't experience the geographic restrictions common among low-income households. For these reasons, continuing to produce rental units at 80% MFI, as Office of Planning's final proposal would do, is not ultimately useful.

Examining severe rent burden gives us a picture of those most challenged by the city's high housing costs. Severely rent burdened households are those that spend half or more of their income on housing. The Joint Center for Housing Studies of Harvard University, Enterprise Community Partners, and the National Housing Conference all examine severe housing cost burden as a measure of the most serious housing needs.[6] Severe rent burden is also the most appropriate measure for urban markets, where it's not uncommon for households up to 120% MFI to be "cost burdened" defined as spending more than 30 percent of income on housing.[7]

The consequences of severe housing cost burden are significant, both in terms of families' ability to meet basic needs, and their ability to climb the economic ladder. Low-income households have little discretionary spending to cut back on to pay for housing. As a result, research shows, low-income families who are severely rent burdened cut back on necessities like food, transportation, healthcare, and retirement savings.[8] It is then even harder for these households to invest in activities, such as workforce training or higher education, that would increase their economic mobility.

Severe rent burden is most prevalent among DC's lower income households. **Figure 3** shows the share of rental households, by MFI band, who spend half or more of income on housing. (Reference **Table 1** for incomes by family size corresponding to these MFI levels.) The rate of severe rent burden accelerates rapidly as you move down the income ladder, and is very uncommon for households near 80% MFI. By contrast, thousands of renter households at or below 60% MFI are in urgent need of affordable housing. **Figure 4** shows that over 13,000 families with incomes between 40% MFI and 60% MFI are severely rent burdened.

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[5] Based on submarket approved rents used by the DC Housing Authority to determine payment standards. Those rents are based on rental market analysis of unassisted rental units.

[6] See for example: Joint Center for Housing Studies and Enterprise Community Partners, "Projecting Trends in Severely Cost-Burdened Renters: 2015–2025," Sept. 2015; National Housing Conference, Center for Housing Policy, "Housing Landscape 2015," March 2015; Enterprise Community Partners, "Call the Question: Will the Greater Washington Region Collaborate and Invest to Solve Its Affordable Housing Shortage?" June 2015.

[7] In fact, in DC, 19 percent of renter households between 100% MFI and 120% MFI ($109,200 to $131,000 for a family of four) meet this definition of 'cost burdened'. DC Fiscal Policy Institute analysis of 2013-2014 American Community Survey microdata.

[8] Joint Center for Housing Studies at Harvard University, "State of the Nation's Housing, 2015," June 2015.

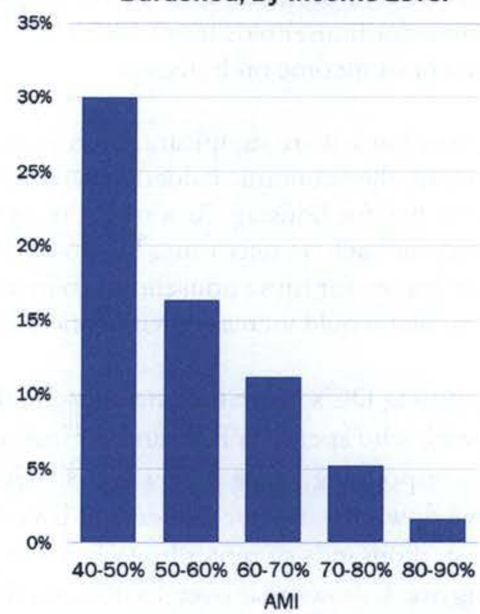
Table 1.

Income Levels			
	Maximum Income		
MFI	1 person	2 people	3 people
50%	$ 38,220	$ 43,680	$ 49,140
60%	$ 45,860	$ 52,420	$ 58,970
70%	$ 53,500	$ 61,150	$ 68,800
80%	$ 61,150	$ 69,890	$ 78,620

Source: DC Code § 42-2801, Department of Housing and Urban Development Program Income Limits, 2015.

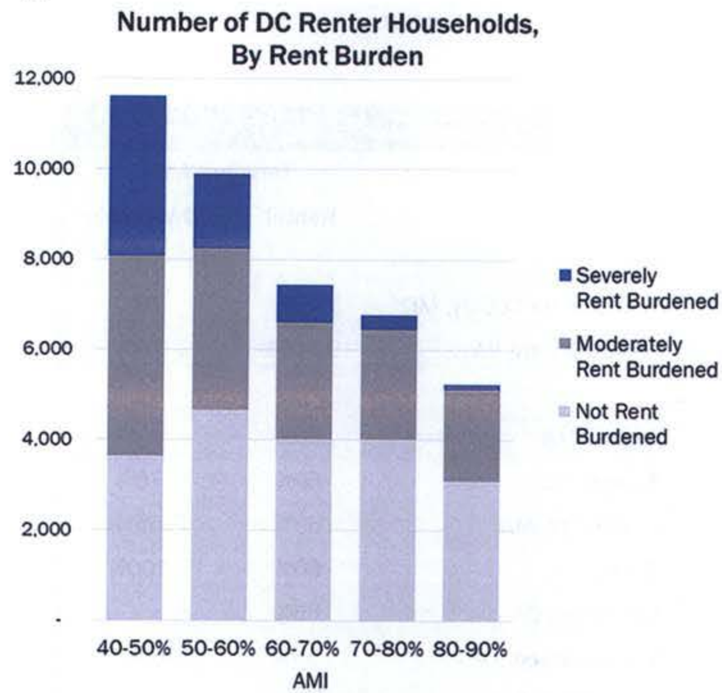
Figure 3.

Percent of DC Households Severely Rent Burdened, By Income Level



Source: DCFPI analysis of 2013-2014 American Community Survey microdata.

Figure 4.



Source: DCFPI analysis of 2013-2014 American Community Survey microdata.

In recognition that households at or below 60% MFI are most likely to struggle to pay rent and get by, DC's Comprehensive Housing Strategy Task Force recommended the majority of the city's housing resources be directed to households at this income level.[9]

Reflecting the tremendous need at that income level, three-fourths of households waiting for inclusionary zoning units are at or below 60% MFI.[10] Option 1B will direct all IZ rental units to these households.

Option 1B will also open up housing opportunities in neighborhoods that most families at 60% MFI would otherwise have no access to because of cost. Only 18 of 56 neighborhoods in DC are cost-accessible to families at this income level.[11]

Option 1B is also consistent with national and regional best practices in inclusionary zoning program design. Affordability gaps occur at different income levels for rental and ownership. Therefore most jurisdictions target a lower income for inclusionary zoning rentals and a slightly higher income level for ownership. **Table 2** shows the income levels targeted by different inclusionary zoning programs. Inclusionary zoning rental units are typically targeted to households at 50-65% MFI. Splitting income targeting by tenure, as Option 1B does, tailors DC's inclusionary

[9] Comprehensive Housing Strategy Task Force, "Bridges to Opportunity: A New Housing Strategy for DC," March 2013.

[10] Office of Planning final report for Case No. 04-33G.

[11] Based on submarket approved rents used by the DC Housing Authority to determine payment standards. Those rents are based on rental market analysis of unassisted rental units.

zoning program to the specific needs of renter and ownership households, and aligns the program with the approach used successful across the country.

Table 2.

Comparison of Inclusionary Zoning Programs		
	Targeted AMI	
Jurisdiction	**Rental**	**Ownership**
Region		
Montgomery County, MD	65%	70%
Fairfax County, VA	50-65%	70%
Nation		
Boston, MA	70%	-
Boulder, CO	60%	70%
Cambridge, MA	65%	65%
Chicago, IL	60%	100%
San Diego, CA	65%	-
San Francisco, CA	55%	70-90%
Santa Fe, NM	65%	-

Source: Urban Institute Affordable Housing Needs Assessment for the District of Columbia, Phase I, 2015; Office of Planning Final Report for Case 04-44G, Technical Appendix, 26 Feb. 2016.

Today, most of DC's inclusionary zoning units are 80% MFI rentals (**Table 3**, from data presented in an Office of Planning working group session). Yet few households at that income level are severely rent burdened. Renters at 80% MFI – over $61,000 for a single person – are largely accommodated by the existing market-rate housing stock. In its set-down report for this case, Office of Planning wrote that housing for this income level, "is very close to available rental market supply, especially for smaller units." Furthermore, the Urban Institute predicts the District will actually have surplus of 4,300 rental units affordable to this income level by 2020, as lots of new residential construction relieves pressure on the market.[12]

For these reasons, we think that an inclusionary zoning program that continues to produce a majority of rental housing at 80% MFI is not ultimately useful.

[12] Urban Institute, "Affordable Housing Needs Assessment for the District of Columbia, Phase II," 2015.

Table 3.

Most IZ Units Are Moderate-Income Rentals			
	Percent of IZ units Includes matter-of-right, PUDs, and subsidized affordable units that count for IZ compliance		
Affordability	**Ownership**	**Rental**	*Total*
50% AMI	7.5%	4.8%	*12.3%*
80% AMI	10.2%	77.5%	*87.7%*
Total	*17.6%*	*82.4%*	*100.0%*

Source: IZ-compliant production with filed Notices of Availability as of June 2015, DC Office of Planning set-down report on case no. 04-33G.

Unfortunately, Office of Planning's final proposal does not much change this status quo. Today, some zones must produce only 80% MFI units, and some must produce half their inclusionary zoning requirement at 50% MFI units and half at 80% MFI. Office of Planning proposes to extend the zones that must split 50/80% MFI to only two zones with high development capacity. Under this proposal, the vast majority of IZ production would still be at the income level where need is smallest. Two-thirds of inclusionary zoning production would be 80% MFI units, based on present development activity.[13] The increase in 50% MFI units would be small. If 200 IZ rental units are produced per year, Office of Planning's proposal would only increase the number of 50% MFI rentals from 37 units to 55 units, out of 200. By contrast, under Option 1B, all 200 rental units would be affordable and available to families at 60% MFI.

Office of Planning's proposed administrative change also falls short of bringing inclusionary units closer to within reach for those on the lottery waiting list. Their proposal is to administratively freeze maximum rents, so that as median income rises relative to this maximum rent, a larger band of incomes will be able afford the rent. But income eligibility for the units would be unchanged. This means a household at 80% MFI could win an inclusionary zoning lottery over a household at 60% MFI. For instance, a higher-income household who has other housing options in the private market could take the place of a person with a much lower income, who may continue to be severely rent burdened. The only way to ensure that majority of families waiting for inclusionary zoning units, who are at or under 60% MFI, is to change the income targeting.

Finally, an administrative change to keep constant does not constitute a clear, binding policy change. It would take until 2021 until the gap between rent and MFI reaches Office of Planning's target, of rent that is 27 percent of the targeted income.[14] This means that not only the current, but possibly the next administration, would have to decide to stick to an administrative decision it is ultimately not bound to. A policy decision by the Zoning Commission is needed so that there will be no doubt.

[13] Office of Planning set-down report for Case No. 04-33G.

[14] Based on Office of Planning final report for Case No. 04-33G.

We've shown that adopting Option 1B will better meting the affordable housing needs of DC residents, and will align our program with national best practices. We also can see that the Proposal will not adversely affect development.

Economic Analysis

When inclusionary zoning was adopted by the Zoning Commission, it created significant value in the market. The program provided bonus density to developments intended to offset the cost of setting aside some affordable units. Office of Planning's model shows that the value of that bonus density has turned out to be far more that what's needed to offset affordability requirements in much of the city. This has provided a windfall to projects. It is time for the District to reclaim that windfall so we can achieve the affordability that DC residents truly and urgently need.

We have conducted analysis of Option 1B using Office of Planning's land value impact model. The model holds all development inputs constant, including developer return, and measures the change in what developers are willing to pay for land. This way, the model provides approximation of how zoning policy changes affect the market.

Table 4 shows the top ten zones by future development capacity, as determined by Office of Planning. Each column shows the cumulative impact of zoning policy on land value. The baseline is today's rental market, absent the value added or reduced by inclusionary zoning, and absent recently eased parking requirements.

Table 4.

Cumulative Impact To No-IZ Rental Market			
Zone	**Base IZ**	Base IZ + **ZRR Parking**	Base IZ + ZRR Parking + **Proposal 1B**
C2A	-0.4%	-0.4%	-4.0%
CR	18.9%	36.0%	16.6%
C3A*	16.9%	31.5%	20.5%
R5A	-5.4%	-5.4%	2.6%†
R5D	-0.1%	-	-4.3%
C2B*	15.1%	-	6.0%
R5B	-1.2%	-1.2%	-5.0%
C3C*	18.6%	34.1%	15.2%
C2C*	2.7%	16.4%	0.9%
W3*	18.9%	36.0%	16.6%

* Currently requires only 80% AMI units.
† Reduce set-aside to greater of 8% of gross residential floor area or 50% of bonus density in R5A.
Source: DCFPI analysis with Office of Planning residual land value impact model.

The first column shows that in most zones, inclusionary zoning has increased land values, even after taking existing affordability requirements into account. Adding in the ZRR parking changes has also added value. The third column shows the effect of the existing bonus density, plus reduced parking, and Option 1B's income targeting. Even when rental affordability is deepened to 60% MFI, seven of the ten zones retain a net positive effect. In other zones, small negative impacts are well within the range of normal price fluctuations. If the value of the existing bonus density can be used to offset deeper affordability, then Option 1B can be achieved without depressing values to the extent that development is significantly affected.

By contrast, Office of Planning's approach is formulated so that the tremendous value added by inclusionary zoning in much of the city is developments' and land owners' to keep. This approach takes the net value added by today's inclusionary zoning as a given, no longer available to be used to achieve more affordable housing. It does that by only comparing impact on present land values, which are already largely inflated by IZ and the ZRR parking changes.

Yet even using this approach, Option 1B has only modest effects on present land value. **Table 5** shows the cumulative effect of zoning policy changes on this baseline. The third column shows that Option 1B, combined with ZRR parking changes, has effects no greater than -5 percent on present land values, well within the price swings typically expected by developers when they plan a project. It is also important to note that Office of Planning's proposal would have a similar impact in C2B, as shown in the third column, where present land value would decline 4.5 percent. This is comparable to our maximum impact of -4.7 percent, in R5D.

Table 5.

Cumulative Impact To Base IZ Rental Market			
Zone	ZRR Parking	ZRR Parking + Proposal 1B	ZRR Parking + OP Proposal‡
C2A	0.0%	-3.6%	-
CR	14.4%	-1.9%	-
C3A*	12.5%	3.1%	7.2%
R5A	0.0%	-0.6%	-
R5D	-	-4.7%	-
C2B*	-	-4.2%†	-4.5%
R5B	0.0%	-3.8%	-
C3C*	13.1%	-2.9%	-
C2C*	13.3%	-1.8%	-
W3*	14.4%	-1.9%	-

* Currently requires only 80% AMI units.
† Reduce set-aside to 7% of gross residential floor area in C2B.
‡ Require 50%/80% AMI unit split, and reduce set aside to 8% of gross residential floor area in C3A C2B, and SP1 (not shown).
Source: DCFPI analysis with Office of Planning residual land value impact model.

Because the effect of any policy change will vary by zone, we propose two modifications to Option 1B. This will better equalize the new requirements with existing bonus density in R5A, and reduce impact to present land value in C2B. These modifications are: (1) reduce the required set-aside in C2B to 7% of gross residential floor area; and, (2) reduce the required set-aside in R5A to the greater of 8% of gross residential floor area or 50% of bonus density. These modifications are shown in the above tables.

In summary, Option 1B puts the value created by the program in much of the city to work for the needs of DC residents, and has only modest effects even assuming that the windfall has already been given away.

Office of Planning has raised the issue that targeting a lower income level for rental, and a higher income for ownership, will bias the market against rental development. However, the District's rental market has significant inertia, and the tremendous amount of planned investment in the DC rental market indicates high confidence in this type of development. Over 10,000 market-rate, Class A rentals are in DC's 36-month pipeline, representing a significant share of the $3 billion invested in the region's Class A rentals last year.[15] Therefore, the strength of the rental market is unlikely to be significantly affected by Option 1B.

Finally, any unique impacts of the transition from current inclusionary zoning regulations to Option 1B on specific projects can be addressed in two ways. Developments currently in the pipeline can comply with current requirements, with new projects proposed going forward subject to the new rules. "Grandfathering" projects in progress was able to successfully address transition challenges

[15] Delta Associates, Multifamily Market Overview, 2015.

when inclusionary zoning was first established. And because any regulation may impact some parties more significantly than others, the zoning code already contains a "safety valve" provision that allows projects 'economically burdened' by IZ requirements to apply for BZA relief."

Comments on Other OP Proposals

Regarding the other questions addressed by the Office of Planning's final report and text amendments, we would like to make the following comments.

Voluntary Participation (§2602.1)
We support this proposal to enable voluntary participation in the IZ program where it would otherwise not be required.

For-Sale Flexibility and Greater Affordability (§2603.11)
We support.

Expand Mayor's Right to Purchase (§2603.5)
We support, and ask the Zoning Commission to provide clarifying language, that the intent of this provision is to enable not only the purchase and resale of inclusionary zoning units, but the purchase and rental of inclusionary zoning units by the Mayor or her designee. Our model for this provision is Montgomery County which has for decades enabled the purchase of IZ units by its housing authority, the Housing Opportunities Commission, and qualified non-profits. These affordable housing providers have then been able to provide additional subsidies and lease units to qualified applicants serve by their program at deeper levels of affordability. (See testimony submitted by Abe Schuchman, CEO, Housing Unlimited, an affordable housing non-profit provider in Montgomery County.) This clarification is needed because the implementing legislation has prohibited the rental of inclusionary zoning units purchased this way. It is also needed because current regulations have not provided a way for the Mayor or for nonprofits to use the provision to purchase inclusionary zoning units.

Matter of Right Off-Site Compliance (§2607)
We support, with conditions, Office of Planning's proposed amendment which would permit off-site compliance as an administrative matter of right with 2,640 fee (one-half mile) of the on-site requirement, with a 20 percent increase set-aside for IZ units.
We would support this amendment with the following conditions:

1. 50 percent more gross square footage of affordable housing than is required on site, rather than the proposed 20 percent.
2. Off-site locations shall be administratively approved by the Zoning Commission, or the Department of Housing and Community Development.

Allowing a matter-of-right provision under strict rules could be a benefiat to the program if substantially more units are provided. For instance, off-site units in some cases might offer a way to better balance the creation of affordable housing in a certain neighborhood and accommodate an extremely high cost project (especially for-sale projects with high condo fees). We want to reinforce that all the other provisions contained in §2607.3 remain intact. We note that continuing to achieve most IZ units on-site is our intention and a major benefit of this program. Thus off-site matter-of-right rule should be highly prescriptive, and will only be a good fit in a limited number of cases.

Flexibility for Extended Vacancy (§2600.2 and §2606)
Office of Planning has proposed to permit flexibility for occupying units that have remained vacant for an extended period of time, or where fees make units unaffordable to target households.
We can support these amendments with the following conditions and further clarification:

1. "Extended period" is defined as longer than 365 days.
   We recognize the possibility that a unit could be hard to market for a variety of factors, and a relief provision like this ensures legal sufficiency. Retaining the income restrictions on a unit that has had an extended vacancy is critical to using this flexibility to solve a one-time problem.
2. Requested flexibility for ownership units whose fees have become unaffordable is too vague and needs clarification. Lack of clarity risks loss of affordable units. One part of the solution is to establish that the determination of "unaffordable fees" to target households will follow the Department of Housing and Community Development's Unaffordable ADU policy. We suggest clarifying that only after a unit is considered too expensive for a 100% MFI household, would the city consider terminating the covenant and recapture the value for the Housing Production Trust Fund.

Increased FAR treated as bonus density (§2604.4) We support this proposal, which says that increases in FAR as a result of variances by the Bureau of Zoning Adjustment (BZA) shall be treated as bonus density for the purposes of calculating the maximum inclusionary zoning requirement. However, we ask that any increase in density be captured for the purposes of inclusionary zoning including: zoning text amendments, and future changes to the Comprehensive Plan, in addition to BZA actions.