



BEFORE THE ZONING COMMISSION  
OF THE DISTRICT OF COLUMBIA



**FORM 102 - PETITION TO AMEND THE TEXT OF THE ZONING REGULATIONS**

Before completing this form, please review the instructions on the reverse side.  
Print or type all information unless otherwise indicated.

In accordance with the provisions of §102 of Title 11 DCMR – Zoning Regulations, request is hereby made for an amendment to the text of the Zoning Regulations, details of which are as follows

Reason and justification for proposed text amendment: 11 DCMR Section 2600 - Inclusionary Zoning Program is producing IZ units and DHCD is successfully administering the selection of applicants. It is now ripe to assess income targeting, set asides, and other issues to ensure that IZ is as effective as it can be

Existing Language (include section or paragraph number). See 11 DCMR Section 2600

Proposed Language: See attachment.

RECEIVED  
D.C. OFFICE OF ZONING  
2015 FEB - 6 AM 10:32

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.  
(D.C. Official Code § 22 2405)

Signature:  Date: 2/5/15

Name: Cheryl Cort, Coalition for Smarter Growth, on behalf of signatories in attached letter

Petitioner's Filing Status (check one)

ANC  DC Government Agency  Federal Government Department  other DC resident & nonprofit

Person(s) to be notified of all actions:

Name: Cheryl Cort, Coalition for Smarter Growth

Address: 316 F Street, NE, Suite 200, Washington D C

Zip Code: 20002 Phone No(s): 202-675-0016 x 122 E-Mail: cheryl@smartergrowth.net

CASE NO. 04-33G

EXHIBIT NO. 2

ANY PETITION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

11 DCMR § 2600

**2600 GENERAL PROVISIONS**

- 2600 1 This Chapter establishes an Inclusionary Zoning Program that furthers the Housing Element of the Comprehensive Plan by increasing the amount and expanding the geographic distribution of adequate, affordable housing available to current and future residents
- 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, 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.
- 2600 3 The most important general purposes of the Inclusionary Zoning Program include the following
- (a) To utilize the skills and abilities of private developers to produce quality affordable housing,
  - (b) To leverage private development, combined where appropriate with zoning density increases, to produce affordable housing throughout the District of Columbia,
  - (c) To mitigate the impact of market-rate residential development on the availability and cost of housing available and affordable to low- and moderate-income households;
  - (d) To increase the production of affordable housing units throughout the District to meet existing and anticipated housing and employment needs,
  - (e) To provide for a full range of housing choices throughout the District for households of all incomes, sizes, and age ranges to preserve diversity and to ensure the benefits of economic integration for the residents of the District,
  - (f) To stabilize the overall burden of housing costs on low- and moderate-income households,
  - (g) To create a stock of housing that will be affordable to low- and moderate-income residents over a long term, and
  - (h) To make homeownership opportunities available to low- and moderate-income residents

SOURCE Final Rulemaking published at 53 DCR 7013 (August 25, 2006).

**2601 DEFINITIONS**

- 2601 1 When used in the Chapter, the following terms and phrases shall have the meanings ascribed

**Achievable bonus density** - The amount of the bonus density permitted under § 2604 that potentially may be utilized within a particular inclusionary development, notwithstanding constraints resulting from the physical characteristics of the land or restrictions imposed by District or federal laws and agencies

**The Act** - the Inclusionary Zoning Implementation Amendment Act of 2006, effective Mar 14, 2007 (D C Law 16-275, 54 DCR 880) References to the Act include any Mayor's Order, agency rule, or other administrative issuance promulgated pursuant to that legislation

**Development, inclusionary** - a development subject to the provisions of this Chapter pursuant to § 2602.1.

**Development, off-site** - a development that accounts for all or part of an inclusionary development's requirements under this Chapter, if approved pursuant to § 2607.

**Eligible household** - one or more persons certified by the Mayor as being a low- or moderate-income household pursuant to the Act.

**Inclusionary unit** - a unit set aside for sale or rental to an eligible low- and moderate-income household as required by this Chapter or by order of the Board of Zoning Adjustment pursuant to § 2607.

**Low-income household** - a household of one or more individuals with a total annual income adjusted for household size equal to less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

**Mayor** - the Mayor of the District of Columbia, the Director of the agency or agencies delegated the authority to implement the Act, or the agency official or officials re-delegated such authority.

**Moderate-income household** - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-one percent (51%) and ~~seventyeighty~~ percent (87%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

**Purchase/rental schedule** - the most current schedule, published by the Mayor pursuant to the Act, establishing the maximum purchase prices and rents for inclusionary units.

**Very low-income household** - a household of one or more individuals with a total annual income adjusted for household size less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

SOURCE: Final Rulemaking published at 53 DCR 7013 (August 25, 2006); as amended by Final Rulemaking published at 54 DCR 6943 (July 20, 2007); as amended by Final Rulemaking published at 55 DCR 2604 (March 14, 2008).

## 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, and W-1 through W-3 Zone Districts, unless exempted pursuant to § 2602.3;
- (b) Have ten (10) or more dwelling units (including off-site inclusionary units); and
- (c) 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.

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-year period after the issuance of the last certificate of occupancy, 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 until December 31, 2017, after which this chapter shall apply;
  - (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 (“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.

2602.10 The requirements of this chapter shall automatically terminate if title to the mortgaged property is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in the first position, or a mortgage in the first position is assigned to the Secretary of the U.S. Department of Housing and Urban Development.

SOURCE: Final Rulemaking published at 53 DCR 7013 (August 25, 2006); as amended by Final Rulemaking published at 54 DCR 6943 (July 20, 2007); as amended by Final Rulemaking published at 55 DCR 2604 (March 14, 2008), as corrected by Errata Notice published at 58 DCR 4314, 4317 (May 20, 2011); as amended by Final Rulemaking & Order No. 04-33D published at 58 DCR 822 (January 28, 2011); as amended by Notice of Final Rulemaking published at 58 DCR 4788, 4815 (June 3, 2011); as amended by Final Rulemaking published at 60 DCR 4834 (March 29, 2013); as amended by Final Rulemaking published at 60 DCR 5144 (April 5, 2013).

## 2603 SET-ASIDE REQUIREMENTS

2603.1 An inclusionary development ~~for which the primary method of construction does not employ steel and concrete frame structure 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 ~~twelve (12%) percent~~ 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 of steel and concrete frame construction 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 Inclusionary developments ~~offering dwelling units for rent located in R-3 through R-5-E, C-1, C-2-A, StE, W-0 and W-1 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 Developments ~~offering for-sale dwelling units located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP 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 twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development for the purpose of leasing these units to low- and very low-income households 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-ten~~ percent (810%) of the gross floor area being devoted to residential use in a StE District.

SOURCE: Final Rulemaking published at 53 DCR 7020 (August 25, 2006); as amended by Final Rulemaking published at 55 DCR 2616 (March 14, 2008); as amended by Notice of Final Rulemaking published at 58 DCR 4788, 4815 (June 3, 2011); as amended by Final Rulemaking published at 60 DCR 4834 (March 29, 2013); as amended by Final Rulemaking published at 60 DCR 5144 (April 5, 2013).

## **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 two percent (~~202%~~) 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 no restrictions on ~~and~~ lot occupancy for zones with greater density than R-4 zones in order to achieve the bonus density:

Base Zone	Matter-of-Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Zoning Height (feet)	Zoning FAR	<del>Lot Occupancy</del>	Height (feet)
R-5-E	75%	90	6.00	<del>90%</del>	<del>90</del> 100
CR	75%	90	6.00	<del>80%</del>	<del>100</del> 110
C-2-A	60%	50	2.50	<del>75%</del>	<del>50</del> 60
C-2-B	80%	65	3.50	<del>80%</del>	<del>70</del> 80
C-2-C	80%	90	6.00	<del>90%</del>	<del>90</del> 100
C-3-A	75%	65	4.00	<del>80%</del>	<del>65</del> 75
W-1	80%	40	2.50	<del>80%</del>	<del>50</del> 60
W-2	75%	60	4.00	<del>75%</del>	<del>80</del> 90
W-3	75%	90	6.00	<del>80%</del>	<del>100</del> 110
SP-1	80%	65	4.00	<del>80%</del>	<del>70</del> 80
SP-2	80%	90	6.00	<del>90%</del>	<del>90</del> 100

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, and additional lot width modifications in order to achieve the bonus density:

Base Zone	IZ Zoning Modifications		
	IZ Min. Lot Area (square feet)	Min. Lot Width (feet)	Min Lot Width (feet) Special Exception
R-2 Detached	3,200	40	<del>320</del>
R-2 Semi-Detached	2,500	30	<del>235</del>
R-3	1,600	20	<del>156</del>
R-4	1,500	18	<del>165</del>

SOURCE: Final Rulemaking published at 53 DCR 7020 (August 25, 2006); as amended by Final Rulemaking published at 55 DCR 2616 (March 14, 2008); as amended by Final Rulemaking published at 57 DCR 9735 (October 15, 2010); as amended by Final Rulemaking published at 60 DCR 4834 (March 29, 2013).

## 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.
- 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 of a project
- SOURCE. Final Rulemaking published at 53 DCR 7013 (August 25, 2006), as amended by Notice of Final Rulemaking published at 58 DCR 822, 825 (January 28, 2011)

## **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 economically viable use of its land.
- 2606 2 No application 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
- SOURCE Final Rulemaking published at 53 DCR 7020 (August 25, 2006), as amended by Final Rulemaking published at 55 DCR 2616 (March 14, 2008)

## **2607 OFF-SITE COMPLIANCE**

- 2607 1 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of § 2603 to be constructed off-site 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
- (a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households,
  - (b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households, or
  - (c) For a rental development the owner of which wishes to change the property's use to one listed in § 2602 3, proof that continuation of the rental use is no longer economically feasible
- 2607 2 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) Consists of new construction for which no certificate of occupancy has been issued,
  - (c) Is at a location suitable for residential development,
  - (d) Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it,
  - (e) Has not received any development subsidies from federal or District government programs established to provide affordable housing,
  - (f) 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) 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) Has not utilized bonus density beyond that provided by § 2604 1
- 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 off-site compliance shall become effective 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 development, 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.

SOURCE: Final Rulemaking published at 53 DCR 7013 (August 25, 2006); as amended by Final Rulemaking published at 55 DCR 2604 (March 14, 2008).

## **2608 APPLICABILITY DATE**

2608.1 The provisions of §§ 2600 through 2607 of this Chapter as adopted by Zoning Commission Orders No. 04-33, 04-33A, and 04-33B and all amendments made by Orders No. 04-33A and 04-33B to 11 DCMR Chapters 1, 11 through 14, 15, 16, and 19 shall become effective upon the publication of the first purchase/rental schedule in the *D.C. Register*.

| 2608.2 The provisions revised on XXXXX of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, XXXX2008.

SOURCE: Final Rulemaking published at 53 DCR 7013 (August 25, 2006); as amended by Final Rulemaking published at 54 DCR 6943 (July 20, 2007); as amended by Final Rulemaking published at 55 DCR 2604 (March 14, 2008).