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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF RESCHEDULED<sup>1</sup> PUBLIC HEARING**

2016 MAY 12 AM 10: 24

**TIME AND PLACE:** **Thursday, March 3, 2016, @ 6:30 p.m.**  
**Jerrily R. Kress Memorial Hearing Room**  
**441 4<sup>th</sup> Street, N.W., Suite 220-South**  
**Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 04-33G (Amendments to Chapter 26, Inclusionary Zoning)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

On February 2, 2015, a petition was submitted to the Zoning Commission (Commission), filed by the Coalition for Smarter Growth, et. al., to amend Chapter 26, Inclusionary Zoning (IZ) (Exhibit 2, Z.C. Case No. 04-33G). The Office of Planning (OP) submitted its report in support of setting the petition down for a public hearing on July 6, 2015, noting that they had several major concerns with the text as proposed in the petition. OP also recommended that the Commission set down alternate text to be considered as part of the same case. On July 13, 2015, the Commission set down the petition and alternate OP text amendments for a public hearing.

**Coalition for Smarter Growth, et. al. Petition**

The proposed substantive amendments of the petition filed by the Coalition for Smarter Growth, et. al., are summarized in the following table:

| Section                     | Summary Amendment  |
|-----------------------------|--|
| 2602 Applicability          | Apply the IZ regulations to developments in both the Downtown Development (DD) and Southeast Federal Center (SEFC) Overlay Districts after December 31, 2017.  |
| 2603 Set-Aside Requirements | <ul style="list-style-type: none"> <li>• Increase the required minimum percentage of residential gross floor area set aside for targeted households from the current 8% to 10% to a single 12%; and</li> <li>• Require the set-aside be the greater of 12% of the gross floor area (GFA) or 75% of bonus density;</li> <li>• In rental projects, target households at or below 50% of the Medium Family Income (MFI)<sup>2</sup>;</li> <li>• In for-sale projects, target households at or below 70% of MFI;</li> <li>• Specify that the Mayor or the DC Housing Authority shall have the right to purchase units for the purpose of leasing units, but only to low and very low income households; and</li> <li>• Increase the set aside requirement in the Saint Elizabeth's Districts from 8% to 10% of GFA.</li> </ul> |
| 2604 Bonus Density          | <ul style="list-style-type: none"> <li>• Increase the permitted bonus density from 20% to 22%;</li> <li>• Remove all lot occupancy restrictions for all IZ projects in in all zones specified in § 2604.2 (R-5-E, CR, C-2-A/B/C, C-3-A, W-1/2/3 and SP-1/2);</li> <li>• Permit an additional 10 feet of height as a matter of right for projects that include IZ units in all zones specified in § 2604.2, for a total of 20 feet beyond matter-of-right heights without IZ; and</li> </ul>  |

<sup>1</sup> This hearing was previously scheduled for Thursday, January 28, 2016.

<sup>2</sup> US Department of Housing and Urban Development (HUD) uses the term Median Family Income (MFI) and not Area Median Income (AMI); any text amendments will reflect the change in terminology from AMI to

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2603.4 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 (1) inclusionary for-sale unit or twenty-five percent (25%) of for-sale inclusionary units, or any number or 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.~~

...

2603.7 An inclusionary development located in a StE District that employs Type I construction as defined by 12 DCMR A § 602.2 of ~~steel and concrete frame construction~~ to construct the majority of dwelling units 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 for inclusionary units. An inclusionary development located in a StE District that does not employ Type I construction as defined by 12 DCMR A § 602.2 to construct the majority of dwelling units shall devote no less than ten percent (10%) of the gross floor area being devoted to residential use in a for inclusionary units.<sup>4</sup>

2603.10 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, 2603.2, and 2603.7.

2603.11 In a for sale inclusionary development, the gross floor areas required set aside for sale to eligible moderate-income households may be reduced by twenty percent (20%) provided all the units are set aside to households earning sixty percent (60%) of the MFI.

**2604 BONUS DENSITY**

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)     |
| <del>R-5-E</del> | 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 | <del>90</del> 80%       | <del>90</del> 100 |
| C-3-A            | 75%                                | 65            | 4.00 | 80%                     | 65                |
| C-3-C            | n/a                                | 90            | 6.5  | n/a                     | <del>90</del> 100 |

<sup>4</sup> This second sentence was once § 2603.6 but was inadvertently repealed

|      |     |    |      |     |     |
|------|-----|----|------|-----|-----|
| 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 (square feet) | Min. Lot Width (feet) | Min Lot Width (feet) 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 obtained as a result of variances granted by the Board of Zoning Adjustment shall be treated as bonus density for the purposes of calculating the applicable maximum set aside requirement under § 2603.**

2605 **DEVELOPMENT STANDARDS**

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.

...

2605.6 Inclusionary units shall not be overly concentrated on any floor, tenure or dwelling type including multiple-dwellings, one (1)-family 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 owner of an Inclusionary Development** 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 Notwithstanding § 2602.5, an owner/occupant of an inclusionary unit may sell the unit at a price greater than that established by the Mayor pursuant to § 103 of the Act if permitted by the Zoning Commission pursuant to the calendar provisions of § 3030 if the owner/occupant demonstrates:

- (a) Condominium or Homeowner association fees have increased to make the unit unaffordable to other Eligible Households as defined § 2602;
- (b) The application for relief includes written confirmation of § 2606.3(a) from the Director of the Department of Housing and Community Development; and
- (c) The inclusionary zoning covenant required by § 105 of the Act remains in effect and the unit is sold at the Maximum Resale Price (MRP) if the income of the Eligible Household purchasing the unit does not exceed one hundred percent (100%) of the MFI; or
- (d) If the inclusionary zoning covenant is terminated and the unit is sold above the MRP, a fee equal to any net proceeds from the sale that are above the MRP is deposited into the District's Housing Trust Fund as 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 two thousand six hundred forty feet (2,640 ft.) of the inclusionary development provided:

- (a) The square footage of the set-aside requirement constructed off-site is twenty percent (20%) greater than what would have been required for the inclusionary development; and
- (b) All other provisions of this section have been met.

2607.2 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 a building permit applications for an inclusionary development made pursuant to § 2607.1 and Board of Zoning Adjustment applications made pursuant to § 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)~~(a) Consists of new construction for which no certificate of occupancy has been issued;
- ~~(e)~~(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 ninety-five percent (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 thirty percent (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 Board of Zoning Adjustment application; and
- ~~(h)~~(g) Has not utilized bonus density beyond that provided by § 2604.1.

2607.3 **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.**

2607.5 ~~No order granting~~ The off-site compliance shall ~~become effective~~ **not relieve an inclusionary development of its entire set-aside 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.

2607.7 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.~~

### 3. Amendments proposed by OP pertaining to Filing Fees.

Amend § 3040 as follows:

3040 **FILING FEES**

3040.7 **No fee shall be charged for applications pursuant to § 2606.3.**

Alternative 2 (OP)

The Commission and OP are also interested in hearing testimony on the issue in Alternative 2 (OP) which focuses on targeted households and MFI based on whether the IZ units are rental or for-sale. In addition to the OP proposed text amendments, Alternative 2 (OP) would require the following alternate text amendments to Chapter 26.

*4. Amendments proposed by OP pertaining to Alternative 2 (OP): § 2601 Definitions and §2603 Set-Aside Requirements).*

**2603 SET-ASIDE REQUIREMENTS**

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

**Eligible household** - one (1) or more persons certified by the Mayor as **not exceeding the applicable maximum income levels of § 2603.3.** ~~being a low or moderate income household pursuant to the Act.~~

~~**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 (60%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.~~

**Median Family Income (MFI)** - the Median Family Income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for family size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers

~~**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 eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act~~

**2603 SET-ASIDE REQUIREMENTS**

**2603.3 Except as provided in § 2603.9, inclusionary units resulting from set asides required by §§ 2603.1 and 2603.2 shall be rented or sold as follows:**

- (a) **Rental units shall be rented only to eligible household earning sixty percent (60%) percent of the MFI; and**
- (b) **For-sale units shall be sold only to eligible household earning eighty percent (80%) percent of the MFI.**

~~2603.3 Inclusionary developments located in R-2 through R-5 D, 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~~

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~~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 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~~

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 *et seq.*)

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021.

**How to participate as a witness.**

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

**Time limits.**

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning of their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail ([donna.hanousek@dc.gov](mailto:donna.hanousek@dc.gov)), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- |    |               |                |
|----|---------------|----------------|
| 1. | Organizations | 5 minutes each |
| 2. | Individuals   | 3 minutes each |

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record. Written statements may also be submitted by mail to 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov); or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

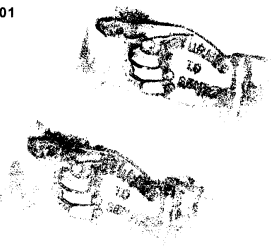
**ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF ZONING

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