

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF SECOND PROPOSED RULEMAKING**

Z.C. Case No. 04-33I

(Text Amendment – 11 DCMR)

(To correct errors and omissions, make technical changes, reorganize certain sections, and clarify language in provisions governing Inclusionary Zoning (IZ) requirements)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Rep1.), hereby gives notice of its intent to amend the first Notice of Proposed Rulemaking, published in the *D.C. Register* on April 12, 2019 (66 DCR 4814), with changes proposed to Subtitles C (General Rules), D (Residential House (R) Zones), G (Mixed Use (MU) Zones), H (Neighborhood Mixed Use (NC) Zones), and K (Special Purpose Zones) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

Substantively, the Zoning Commission proposes to amend the first Notice of Proposed Rulemaking in the following sections:

- Subtitle C § 1005.7 to clarify that the prohibition on locating IZ units in the cellar space applies only to apartment houses, as proposed by the Office of Planning in its September 10 Hearing Report and November 9, 2018 Supplemental Report (Exhibits 6, p. 10 and 15, p. 4);
- Subtitle D § 302.2 to clarify that in the R-1-A and R-1-B zones, and in the portion of the R-3 Anacostia Historic District, (i) new penthouse habitable space is subject to IZ, as is currently established in Subtitle C §§ 1001.5(a)(1) and (3), and (ii) voluntary IZ compliance does not authorize the use of modifications of Subtitle C § 1002, as is currently established in Subtitle C § 1001.2(e)(2);
- Subtitle G §§ 104.1, 403.1, 404.1, 504.3, and 804.2 to clarify that for the MU-13 and MU-27 zones (i) new penthouse habitable space in the MU is subject to IZ, as is currently established in Subtitle C §§ 1001.5(a)(2) and (4), and (ii) voluntary IZ compliance does not authorize the use of modifications of Subtitle C § 1002, as is currently established in Subtitle C § 1001.2(e)(2); and to include the new MU-3A and MU-3B zones established by Z.C. Order No. 18-06;
- Subtitle H §§ 103.1 and 702.2 to clarify that in the NC-6 zone (i) new penthouse habitable space is subject to IZ, as is currently established in Subtitle C § 1001.5(a)(8), and (ii) voluntary IZ compliance does not authorize the use of modifications of Subtitle C § 1002, as is currently established in Subtitle C § 1001.2(e)(2); and
- Subtitle K § 200.12 to clarify in the SEFC zones that (i) IZ applies to the SEFC zones except for properties with LDA, and (ii) new penthouse habitable space is subject to IZ except for residential rental buildings.

These changes were not included in the first Notice of Proposed Rulemaking inadvertently, either despite (i) being specifically included in Office of Planning’s proposed text adopted by the Commission, or (ii) reflecting the current provisions of the Zoning Regulations that were inadvertently dropped of the relevant sections that were brought to the attention of the Commission, which during reorganization approved correcting these omissions. Although these

changes were intended to be included in the first Notice of Proposed Rulemaking, in the interests of clarity, the Commission is publishing these changes in this Notice of Second Proposed Rulemaking pursuant to 1 DCMR § 309.7.

Final rulemaking action shall be taken not less than seven (7) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined** text; deletions are shown in ~~striketrough~~ text; the proposed changes to the first Notice of Proposed Rulemaking text are shown in **bold underlined CAPITALS** text):

Subsection 1005.7 of § 1005, DEVELOPMENT STANDARDS REGARDING INCLUSIONARY UNITS, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to clarify the exclusion on IZ units in cellars applies only to apartment houses, to read as follows:

1005.7 **Inclusionary Units IN APARTMENT HOUSES shall not be located in cellar space.**

Subsection 302.2 of § 302, DENSITY – LOT DIMENSIONS, of Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended to clarify that new penthouse habitable space is subject to IZ, to read as follows:

302.2 **EXCEPT FOR NEW PENTHOUSE HABITABLE SPACE AS DESCRIBED IN SUBTITLE C § 1500.11, The Inclusionary Zoning requirements, modifications, and bonus density of Subtitle C, Chapter 10 shall not apply to the R-1-A and R-1-B zones, or to that portion of the Anacostia Historic District within the R-3 zone.**

Subsection 104.1 of § 104, INCLUSIONARY ZONING, of Chapter 1, INTRODUCTION TO MIXED USE (MU) ZONES, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be amended to clarify that new penthouse habitable space is subject to IZ and that voluntary IZ developments are not eligible for IZ bonuses, to read as follows:

104.1 ~~Inclusionary zoning~~ **The Inclusionary Zoning (IZ) requirements, and the available IZ modifications and bonus density, shall apply to all** ~~for the MU zones are~~ **except the PORTION OF THE MU-13 and MU-27 zones IN THE GEORGETOWN HISTORIC DISTRICT,** as specified in Subtitle C, Chapter 10, **Inclusionary Zoning, and in the zone-specific development standards of this subtitle; provided that THE IZ BONUS DENSITY OF SUBTITLE C § 1002.3 IS AVAILABLE FOR DEVELOPMENTS IN THE MU-13 AND MU-27 ZONES THAT VOLUNTARILY AGREE TO BECOME INCLUSIONARY DEVELOPMENTS SUBJECT TO IZ REQUIREMENTS PURSUANT TO SUBTITLE C § 1001.2(D).** ~~except for new penthouse habitable space as described in subtitle e Subtitle C § 1500.11, iz requirements,~~

modifications, and bonus density shall not apply to IN THE PORTIONS OF THE MU-13 AND MU-27 ZONES IN THE Georgetown Historic District in the MU-13 zone and in the MU-27 zone SHALL BE SUBJECT TO IZ REQUIREMENTS.

Section 403, HEIGHT, of Chapter 4, MIXED-USE ZONES – MU-3, MU-4, MU-5, MU-6, MU-7, MU-8, MU-9, MU-10, AND MU-30, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be amended to reflect the new MU-3A and MU-3B zones created by Z.C. Order No. 18-06, to read as follows:

403.1 The maximum permitted building height and number of stories, not including the penthouse, in the MU-3 through MU-10 zones and the MU-30 zone shall be as set forth in the following table, except as provided in Subtitle G § 403.2:

TABLE G § 403.1: MAXIMUM PERMITTED BUILDING HEIGHT/AND STORIES

Zone	Maximum Height (Feet)	Maximum Stories
<u>MU-3A</u>	40	3
<u>MU-3B</u>	<u>50</u>	<u>4</u>
MU-4	50	N/A
MU-5-A	65	N/A
	70 (IZ)	
MU-5-B	75	N/A
MU-6	90	N/A
	<u>100 (IZ)</u>	
MU-7	65	N/A
MU-8	70	N/A
MU-9	90	N/A
	<u>100 (IZ)</u>	
MU-10	90	N/A
	100 (IZ)	
MU-30	110	N/A

Section 404, LOT OCCUPANCY, of Chapter 4, MIXED-USE ZONES – MU-3, MU-4, MU-5, MU-6, MU-7, MU-8, MU-9, MU-10, AND MU-30, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be amended to reflect the new MU-3A and MU-3B zones created by Z.C. Order No. 18-06, to read as follows:

404.1 The maximum permitted lot occupancy for residential use in the MU-3 through MU-10 zones and the MU-30 zone shall be as set forth in the following table:

TABLE G § 404.1: MAXIMUM PERMITTED LOT OCCUPANCY FOR RESIDENTIAL USE

Zone	Maximum Lot Occupancy for Residential Use (Percentage)	
<u>MU-3A</u>	60%	<u>60</u>
	60% (IZ)	
<u>MU-3B</u>	60%	<u>60</u>
	60% (IZ)	

Zone	Maximum Lot Occupancy for Residential Use (Percentage)	
MU-4	60%	60
	75% (IZ)	75 (IZ)
MU-5-A MU-5-B	80%	80
	80% (IZ)	
MU-6	80%	75
	90% (IZ)	80 (IZ)
MU-7	75%	75
	80% (IZ)	80 (IZ)
MU-8	N/A	N/A
MU-9	N/A	N/A
MU-10	75%	75
	N/A	80 (IZ)
MU-30	N/A	N/A

Subsection 504.3 of § 504, LOT OCCUPANCY, of Chapter 5, MIXED-USE ZONES – MU-11, MU-12, MU-13, AND MU-14, of Subtitle G, MIXED USE (MU) ZONES, is proposed to be amended to clarify that IZ does not apply to the MU-13 zone in the Georgetown Historic District and that voluntary IZ developments are not eligible for IZ bonuses, to read as follows:

504.3 The Inclusionary Zoning requirements and modifications of Subtitle C, Chapter 10 shall not apply to THE PORTION OF the MU-13 ZONE IN THE GEORGETOWN HISTORIC DISTRICT AND MU-27 ZONES; PROVIDED THAT THE IZ BONUS DENSITY OF SUBTITLE C § 1002.3 IS AVAILABLE FOR DEVELOPMENTS IN THE MU-13 AND MU-27 ZONES THAT VOLUNTARILY AGREE TO BECOME INCLUSIONARY DEVELOPMENTS SUBJECT TO IZ REQUIREMENTS PURSUANT TO SUBTITLE C § 1001.2(D).

A new § 804.2 is proposed to be added to § 804, LOT OCCUPANCY, of Chapter 8, NAVAL OBSERVATORY MIXED-USE ZONE – MU-27, of Subtitle G, MIXED USE (MU) ZONES, to clarify that IZ does not apply to the MU-27 zone in the Georgetown Historic District, to read as follows:

804.2 THE INCLUSIONARY ZONING REQUIREMENTS AND MODIFICATIONS OF SUBTITLE C, CHAPTER 10 SHALL NOT APPLY TO THE PORTION OF THE MU-27 ZONE IN THE GEORGETOWN HISTORIC DISTRICT.

Subsection 103.1 of § 103, INCLUSIONARY ZONING, of Chapter 1, INTRODUCTION TO NEIGHBORHOOD MIXED USE (NC) ZONES, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is proposed to be amended to clarify that IZ does not apply to the NC-6 zone and that voluntary IZ developments are not eligible for IZ bonuses, to read as follows:

103.1 Inclusionary zoning~~The Inclusionary Zoning (IZ) requirements, and the available IZ modifications and bonus density, shall apply to~~ the Inclusionary Zoning (IZ) requirements, and the available IZ modifications and bonus density, shall apply to ~~for~~ the ALLNC

zones, except the NC-6 zone,are as specified in Subtitle C, Chapter 10, Inclusionary Zoning, and in the zone-specific development standards of this subtitle; provided that~~THE IZ BONUS DENSITY OF SUBTITLE C § 1002.3 IS AVAILABLE FOR DEVELOPMENTS IN THE NC-6 ZONE THAT VOLUNTARILY AGREE TO BECOME INCLUSIONARY DEVELOPMENTS NEW PENTHOUSE HABITABLE SPACE AS DESCRIBED IN SUBTITLE C § 1500.1 IN THE NC-6 ZONE SHALL BE~~ subject to IZ requirements PURSUANT TO SUBTITLE C § 1001.2(D).

Subsection 702.2 of § 702, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 7, EIGHTH STREET SOUTHEAST NEIGHBORHOOD MIXED-USE ZONE – NC-6, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is proposed to be amended to clarify that voluntary IZ developments are not eligible for IZ bonuses, to read as follows:

702.2 EXCEPT FOR NEW PENTHOUSE HABITABLE SPACE AS DESCRIBED IN SUBTITLE C § 1500.11, the Inclusionary Zoning requirements, modifications, and bonus density of Subtitle C, Chapter 10 shall not apply to the NC-6 zone; PROVIDED THAT THE IZ BONUS DENSITY OF SUBTITLE C § IS AVAILABLE FOR DEVELOPMENTS IN THE NC-6 ZONE THAT VOLUNTARILY AGREE TO BECOME INCLUSIONARY DEVELOPMENTS SUBJECT TO IZ REQUIREMENTS PURSUANT TO SUBTITLE C § 1001.2(D).

Subsection 200.12 of § 200, GENERAL PROVISIONS (SEFC), of Chapter 2, SOUTHEAST FEDERAL CENTER ZONES, of Subtitle K, SPECIAL PURPOSE ZONES, is proposed to be amended (this subsection was not proposed to have changes in the first Notice of Proposed Rulemaking) to clarify that IZ does not apply except for properties with affordable housing agreements with the District, to read as follows:

200.12 THE INCLUSIONARY ZONING REQUIREMENTS, MODIFICATIONS, AND BONUS DENSITY OF SUBTITLE C, CHAPTER 10 SHALL APPLY TO THE SEFC ZONES EXCEPT FOR:

- (a) PROPERTIES SUBJECT TO A LAND DISPOSITION OR OTHER AGREEMENT WITH THE DISTRICT OF COLUMBIA THAT MANDATES THE PROVISION OF AFFORDABLE HOUSING; PROVIDED THAT THESE PROPERTIES ARE SUBJECT TO IZ REQUIREMENTS FOR NEW PENTHOUSE HABITABLE SPACE AS DESCRIBED IN SUBTITLE C § 1500.11; AND
- (b) PENTHOUSES IN RESIDENTIAL RENTAL BUILDINGS~~THE PROVISIONS OF SUBTITLE C § 1500.11 GOVERNING THE APPLICATION OF SUBTITLE C, CHAPTER 10 SHALL APPLY TO PENTHOUSES IN THE SEFC ZONES, EXCEPT THAT THIS PROVISION SHALL NOT APPLY TO RESIDENTIAL RENTAL BUILDINGS.~~

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.