

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** *JLS*  
Jennifer Steingasser, AICP  
Deputy Director, Development Review & Historic Preservation  
Jonathan Kirschenbaum, AICP  
Development Review Specialist  
Art Rodgers  
Senior Housing Planner

**DATE:** November 6, 2020

**SUBJECT:** ZC Case 20-02 Public Hearing Report for a Proposed Text Amendment to Subtitles B, C, F, G, I, K, U, X, and Z – Expanded Inclusionary Zoning<sup>1</sup>

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**I. RECOMMENDATION**

The Office of Planning (“OP”) recommends that the Zoning Commission **approve** the proposed text amendments, as provided in Appendix I of this report:

1. Revisions to Definitions (Subtitle B § 100.2).
2. Revisions to General Rules (Subtitle C §§ 1001, 1002, 1003 and 1006).
3. Revisions to Residential Apartment (RA) Zones (Subtitle F § 302).
4. Revisions to Mixed-Use (MU) Zones (Subtitle G §§ 104, 504, and 804).
5. Revisions to Downtown (D) Zones (Subtitle I §§ 502, 516, 531, 539, 547, 555, 562, and 569).
6. Revisions to Special Purpose Zones (Subtitle K § 500)
7. Revisions to Use Permissions (Subtitle U § 320).
8. Revisions to General Procedures (Subtitle X §§ 500, 501, and 502).
9. Revisions to Zoning Commission Rules of Practice and Procedure (Subtitle Z §§ 400 and 500).

The proposal would **not be inconsistent** with the Comprehensive Plan.

OP requests flexibility to work with the Office of Attorney General (“OAG”) to further refine the proposed text.

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<sup>1</sup> Also known as “IZ Plus.”

## II. BACKGROUND

On September 9, 2020, OP filed a set down report (Exhibit 6) with the Office of Zoning (“OZ”) that served as a petition for a proposed text amendment to expand the existing inclusionary zoning (“Regular IZ”) requirements for certain map amendments. The report provided a detailed discussion of the proposal, including why it is needed, what it will help achieve, and where it fits within the planning context of other affordable housing regulations, policies, and goals. The report also provided a detailed analysis on how an Expanded Inclusionary Zoning (“Expanded IZ”) requirement would be applied and on the economic model that was used to guide the development of the Expanded IZ requirement.

At its September 14, 2020 virtual public meeting the Zoning Commission set down for a public hearing text amendment case 20-02, which proposes the Expanded IZ set-aside and mapping requirements. The proposed text amendments would:

- Apply to a map amendment:
  - Where the new zone permits a higher maximum residential floor-area-ratio (“FAR”) than the existing zone;
  - From a PDR zone to an R, RF, RA, MU, D, CG, or ARTS zone; or
  - From Unzoned to an R, RF, RA, MU, D, CG, or ARTS zone.
- Not apply to a planned unit development (“PUD”) application with a related map amendment or a map amendment to a HE (Hill East), NHR (North Howard Road), SEFC (Southeast Federal Center), StE (St. Elizabeth), USN (Union Station North), or WR (Walter Reed) zone or to the BR (Barry Farm) zones (pending case ZC No. 20-21).
- Increase the Regular IZ set-aside requirement relative to the increase in permitted residential FAR to create a new Expanded IZ set-aside requirement of up to 20 percent.
- Provide an alternative set-aside requirement if all of the Inclusionary Units are reserved for households earning no more than 50 percent MFI or if 50 percent of the Inclusionary Units have three or more bedrooms.

All other Regular IZ program requirements would remain the same and apply to Inclusionary Developments located in zones subject to the Expanded IZ set-aside requirement.

### **Outreach**

A virtual public roundtable on July 15, 2020 was hosted by OP to discuss and gather feedback about the Expanded IZ concept proposal. Approximately 90 people participated in the roundtable discussion, and of those who testified, they were overwhelmingly in support of the concept proposal. A summary of both the testimony and written comments that were received from the public can be found in Appendix III of the set down report (Exhibit 6). A recording of the roundtable can be viewed on the [planning.dc.gov/inclusionaryzoning](https://planning.dc.gov/inclusionaryzoning).

OP also held two meetings to discuss the economic model with stakeholders to help finetune the assumptions of the model that were discussed in the set down report. The first meeting, which was held on October 6, 2020, introduced the model and discussed its mechanics and variables and how it works. The second meeting, which was held on October 13, 2020, gathered early feedback about working with the model and answered questions. Participants were asked to share their final feedback

about using the model prior to the filing of this report. Below is a discussion of the feedback that was received.

### **Economic Modeling**

Since OP's public round table, OP has been working with stakeholders to test and finetune the economic model. This section builds on what was provided in OP's set down report and focuses on: the feedback received since set down, changes made to the model, and the impact on the balance between changes in density and affordability requirements. The economic model used in this case builds off the work OP conducted to model IZ during the comprehensive review of IZ as part of 04-33G, which included extensive engagement with stakeholders.

The approach to modeling Expanded IZ reflects its importance as a tool for furthering the Comprehensive Plan Housing Element's Policy H-1.2.9 Advancing Diversity and Equity of Planning Areas. The approach recognizes that it may not work in all areas, market conditions, and zone changes, but that it represents a viable tool to produce dedicated affordable units in the high cost areas of the District where it is expensive to subsidize without bringing to the bear the added value of changes in density.

Feedback received through OP's two online public forums held on October 6, and 13 came from representatives of Enterprise Community Partners and Somerset Development.

Overall, feedback received during the forums characterized the model as strong and there was agreement that two inputs should be modified.

1. **Hard construction costs made up of materials and labor were too low.** Participants expressed that construction costs were approximately eight to nine percent too low; and
2. **Soft development costs such fees, insurance, and others were too high.** Participants suggested that soft costs typically represent 25 percent of hard costs instead of the 30 percent OP had initially used.

OP accepted these suggestions and applied them to the model. These two changes tended to cancel each other out, so the net effect to modeled land value was measurable but minimal.

OP also heard from stakeholders in a session requested by the DC Building Industry Association (DCBIA) which included representatives from DCBIA, Folger-Pratt, WC Smith, Holland and Knight, Goldblatt Martin Pozen. Comments included:

1. **The model may be overparking the base IZ.** OP assumed one complete below grade level of parking needed meet the minimum zoning standards. This resulted in a parking to unit ratios of .61 for the matter of right IZ scenario and .44 spaces for the map amendment scenario. Participants suggested that matter-of-right project would proceed with a half level of below grade structure. OP reviewed a sample of projects and found that one complete below grade level was almost always provided. In some cases, the level was half parking, but the other half was potentially more valuable revenue source such as cellar apartments or retail uses. OP's model does not take into account potential revenue from below grade uses other than parking. OP made no changes to the model based on this feedback.
2. **The Expanded IZ scenario does not include both the longer pre-development period due to the map amendment process on the front end, and a longer period of time to lease up**

**units within a larger building upon completion.** DCBIA participants proposed adding 12 months to the predevelopment process. OP notes that a typical map amendment case takes approximately nine months and a portion of that time overlaps with other predevelopment activities. However, OP agrees that some time should be added to total time frame needed to calculate the Expanded IZ scenario's hurdle or return.

3. **Required annual rate of return to equity is too low at 11 percent.** Participants cited a 2<sup>nd</sup> quarter 2020 Price-Waterhouse Coopers report that the current national annual average is 15.2 percent for entitled land and there is a 3.4 percent premium to entitle land for a total of 18.7 percent. The participants then rounded this up to a full 20 percent annual return. This is a significantly higher return from OP's current rate of 11.0 percent, which was based on feedback prior to set down, and even higher than the rate OP assumed at part of IZ's comprehensive review in case 04-33G in 2016. OP notes that 1) this is a rate that may be a result of COVID-19's impact on residential development and does not reflect long term trends; 2) this is a national average and may not reflect a rate appropriate to Washington DC metropolitan area's relative lower risk market. OP is conducting additional research and invites additional input.
4. **Expanded IZ does not work when there is a shift to high-rise construction.** Participants provided an example of a map amendment from MU-7 to MU-10, which changes FAR and height from 4.0 (4.8 w/IZ) and 65 feet, to 6.0 (7.2 w/IZ) and 90 feet (100 w/IZ). OP chose sample scenarios not only based on patterns of past map amendment cases, but also on an analysis of common base zones and their likely increases under the proposed FLUM. The MU-7 is mapped in very few places and would not represent a typical base zone. OP further notes that typical map amendment cases pursue changes up to 80 feet in height, or greater than 110 feet in height and there are no cases that cross from less than 80 feet to 100 feet or more. All of the cases that exceeded 80 feet in height started with zones that permitted 90 feet in height and applied for 110 to 130 feet. The lack of cases that went from less than 80 feet to less than 100 feet is directly related to the change to more expensive steel and concrete construction. Prior to the hearing OP will add a third scenario that reflects a more typical map amendment case to high density steel and concrete construction in a supplemental report.
5. **Pre-existing uses impede land sales for redevelopment.** Rent revenues from existing buildings that underutilize permitted zoning often provide sufficient return to landowners that the acquisition price to overcome existing returns is prohibitively expensive for redevelopment. OP has been aware of this for several years and recognizes this as an ongoing challenge. This condition is one reason why the tax abatement for affordable housing in high cost areas of the city was approved by the Council this past summer.
6. **Some site conditions limit the ability to achieve full buildout of the new zone.** Participants expressed concern that projects cannot always access the permitted increase from a map amendment due to specific site conditions, even when the zone change is a minimal change. OP provided several comments in response. First, in DHCD's 2019 Annual report 85 percent of matter-of-right and BZA cases receive bonus density averaging 19 percent. Second, many map amendments do not seek the full potential zone change permitted under the FLUM due to site constraints or economic reasons that do not warrant high-rise construction. Finally, ultimately land valuation and price are set based on a site's actual development capacity.
7. **Expressing the requirements based on base zone with IZ bonus to new zone with IZ bonus has greater logic for landowners.** The current proposed sliding scale is based on the total change in density from the base zone without IZ bonus density to the new zone with

bonus density. Participants felt that is harder to understand that FAR with bonus density to new FAR with bonus density. OP is open to more discussion over how to best express the requirements.

- 8. Consider geographic variations in markets as Expanded IZ appears to work better in higher cost markets.** Participants expressed that the Expanded IZ appears to work better in high cost areas of the District and not as well in lower cost areas. OP has focused analysis on two Planning Areas, Rock Creek West and Upper NE. OP is optimistic based on this feedback that Expanded IZ has the potential to advance the District’s diversity and equity goals. OP notes that developers have other options for other areas of the city including: matter-of-right development, PUDs, or seeking development assistance from the Housing Finance Agency (HFA) and DHCD.

OP is currently conducting additional research on the comments from DCBIA participants and will provide a final review of these comments and OP’s final economic modeling analysis in a supplemental report.

#### Other Policies and Integration with Other Affordable Housing Tools

OP has stated that Expanded IZ should be able to operate independent of other affordable housing tools such Tax-Exempt Bonds with 4 percent Low Income Housing Tax Credits (LIHTC) or the new tax abatement for affordable housing in high cost areas of the city. However, both of these provide significant value to development projects. The tax abatement requires 33 percent of units to be affordable at an average of 80 percent of the Median Family Income (MFI) and permits qualifying households to earn up to 100 percent of the MFI. Figure 1 below illustrates one possible scenario how this might happen. Expanded IZ units would total 20 percent of the building at 60 percent of the MFI, while the remaining 13 percent would target households upwards of 100 percent MFI.

**Figure 1 Sample Expanded IZ with Tax Abatement**

Unit Types	MFI	% Project
Market		67%
Tax Abatement		33%
IZ Units	60%	20%
Non-IZ Affordable	100%	13%
Average MFI	76%	100%

Source: DC Office of Planning.

OP’s analysis of the intersection of Expanded IZ and the tax abatement suggests the two have the significant potential to achieve the District’s diversity and equity goals. However, modeling the impact was difficult due to the lack of completed regulations and the budget for the tax is capped and highly competitive, so few projects will ultimately receive the tax abatement.

#### COVID-19 and Other Market Fluctuations

Economic modeling of policy impacts on development and land values during COVID-19, forest fires affecting timber supply, tariffs on trade and other rapidly fluctuating factors must attempt to take longer term perspective. First, CoStar expects the pace of development to slow over the next several

years until the market works through the back log of recently delivered, largely vacant, buildings that have been slow to lease up. CoStar data documents another side effect that asking rents for new market rate construction is dropping across the city. In Rock Creek West, asking rents have dropped 8 percent in less than one year since the start of public health response to COVID-19 in March 2020. This also suggests that applications for map amendments for Expanded IZ may be minimal in the short run.

In response to these recent rapid fluctuations, OP adjusted the modeled asking rent from \$3.91 per square foot per month to CoStar forecasted average through 2024 of \$3.68. Similarly, CoStar has forecasted market cap rates for these buildings to be around 4.2 for the next four years. It is very possible that other current fluctuations are not temporary but represent longer term shifts. OP is conducting ongoing research to monitor trends and shifts in demand. When the nation's economy stabilizes, OP can revisit the underlying assumptions of the Expanded IZ economic modeling, identify any necessary changes to the policy, and report back to the Zoning Commission, if needed.

### **III. CHANGES TO THE APPLICATION SINCE SET DOWN**

Since the time of set down, OP proposes to exclude the Northern Howard Road (“NHR”) zone from the Expanded IZ requirements. The NHR zone already has additional matter-of-right inclusionary zoning requirements that go beyond the requirements of Regular IZ, including a 12 percent set-aside requirement, a deeper affordability requirement, and a family-sized unit requirement. The NHR zone also has additional requirements for ground floor uses, sustainability, and mandatory Zoning Commission review. Taken together, the NHR zone already requires a host additional benefits to the community similar to that of a planned unit development (“PUD”), which is not subject to Expanded IZ.

OP proposes to also exclude the Barry Farm (“BR”) zones from the Expanded IZ requirements because these zones are already subject to deeper affordable housing requirements that are generally separate and apart from the Inclusionary Zoning requirements of Subtitle C, Chapter 10.

With regards to the 20 percent set aside reduction if 50 percent of IZ Units have three or more bedrooms, OP recommends that it be permitted on a trial basis and a condition be included that OP submits a report to the Zoning Administrator commenting on compliance with the criteria for the set-aside reduction. OP's review would address questions such as:

- Does the proposed project requesting the reduction have important family-oriented design elements, of which two key elements are access to common areas and outdoor activity space suitable for children and a concentrated share of both market rate and IZ three-bedroom units; and
- Does the market study conclude there is demand for family sized IZ units based on neighborhood amenities such as parks and proximity to schools.

OP worked with the Department of Housing and Community Development (DHCD) to investigate the potential to encourage more three-bedroom IZ units. DHCD identified several demand-related issues affecting the viability of the option that make the larger three-bedroom IZ units very difficult to market and get occupied in a timely manner. Based on DHCD's experience administering three-bedroom units built to date these include:

- Only 25 percent (3,133 out of 12,505) of households on the lottery registration are large enough to qualify for three-bedroom units. While only 6 percent (84 out of 1,370) of delivered

IZ units have three or more bedrooms, there has been difficulty getting the units rented or sold to eligible households.

- Demand from larger IZ households is affected by both neighborhood and building amenities that are not child friendly. Important elements include absence of neighborhood parks and schools, and family friendly building elements such as outdoor activity space for children.
- Presence of other families for social interaction and support. To date most IZ developments have included market rate units focused on small one and two person households without children. The lack of other families has not appealed to prospective IZ households.

DHCD’s concerns align with national best practice research that has identified several elements that facilitate families in multi-family buildings. These include unit locations at or near ground level, interior design features such as two-story units, or where bedrooms are separated from the main living area, and access to storage. However, OP views a minimum threshold of 3-bedroom units within the building and access to outdoor active/play space either in the building or nearby to be critical. Proximity to a school is a third element that is needed to support family friendly development. OP has not currently added schools but is continuing to conduct research on appropriate thresholds and may revisit this in the future.

OP and DHCD conclude a pilot is appropriate because a family-oriented housing policy requires a longer term approach due to the lack of awareness and demonstrated opportunity will impede early adopters. As the pilot period progresses OP will consult with DHCD and report back to the Zoning Commission on production and if any adjustments are needed.

**IV. COMMISSION COMMENTS FROM SET DOWN MEETING**

The following summarizes comments from the Zoning Commission and requests for additional information relating to the proposed text amendment from the set down meeting:

Comment	Response
ZC 1 – Provide how many IZ units have already been created and how many are in the pipeline for creation.	To date, there have been 1,219 IZ units created under the Inclusionary Zoning program since it began in August 2009. There are approximately 1,500 additional IZ units in the pipeline either under construction or pre-development that could deliver over the next five years.
ZC 2 – Provide any projections on how many IZ units would be created under this proposed text amendment.	There are a range of unknown variables that make it very difficult to provide a projection of potential IZ units that would be created under Expanded IZ. The variables include not knowing: <ol style="list-style-type: none"> <li>1. The increase in density requested through a future map amendment,</li> <li>2. The program of the development built pursuant to an approved map amendment (i.e. residential, mixed-use, non-residential),</li> <li>3. Whether a development would be built to the total permissible FAR under the new zone, and</li> </ol>

	<p>4. The share of projects pursuing a map amendment versus a PUD.</p> <p>OP did analyze map amendments that were approved over the last five years and estimated how many IZ units would be required under Regular IZ and Expanded IZ. The analysis assumes the developments contained only residential floor area and were built to the total permissible FAR under the new zone.</p> <p>An estimated total of 584 IZ units would be required under Regular IZ and an estimated total of 1,082 IZ units would be required if every map amendment had been subject to Expanded IZ (498 more IZ units than what Regular IZ would require).</p> <p>Six percent of buildable parcels (approximately 80 million square feet of land) are opportunity sites with land use designations that would permit an increase in density of 0.5 FAR or more above current zoning. This reflects much of the District’s buildable capacity for the next 30 years.</p>
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## V. PLANNING CONTEXT

### COMPREHENSIVE PLAN

As fully discussed in the OP set down report (Exhibit 6), the proposed text amendment would further Comprehensive Plan policy objectives, particularly with respect to policies within the Housing Citywide Elements. The most significant of the Housing Element policies is:

#### Policy H-1.2.9 Advancing Diversity and Equity of Planning Areas

Proactively plan and facilitate affordable housing opportunities and make targeted investments that increase demographic diversity and equity across Washington, DC. Achieve a minimum of 15 percent affordable units within each Planning Area by 2050. Provide protected classes (see H-3.2 Housing Access) with a fair opportunity to live in a choice of homes and neighborhoods, including their current homes and neighborhoods.

Expanded IZ in conjunction with the proposed Future Land Use Map (“FLUM”) would support existing Comprehensive Plan policies that affordable housing be considered a priority public benefit for the purpose of granting density bonuses when new development is proposed. Pending amendments to the Comprehensive Plan reinforce the need to further increase IZ set-aside requirements when a zoning action permits greater density or change in use. Expanded IZ would be one tool among many used to fulfill the District’s goal of ensuring housing equity throughout the entire District by the production of additional affordable housing.



Expanded IZ would help achieve the Mayor’s goal for the creating 36,000 new housing units by 2025, including 12,000 affordable units. The Mayor’s Housing Equity Report identified the Rock Creek West Planning Area and others that need the greatest number of additional dedicated affordable units in order to meet 2050 diversity and equity goals. OP specifically tested the economic viability of Expanded IZ with data from Rock Creek West’s Planning Area to ensure it work to further the District’s equity goals.

## **VI. COMMUNITY COMMENTS**

Since the September 14, 2020 set down, one member of the public filed comments to the record (Exhibit 7). These comments were also provided to OP as part of the July 15, 2020 virtual public roundtable to discuss the Expanded IZ concept proposal.

## **VII. SUPPLEMENTAL ANALYSIS**

OP will continue to review the model and consult with stakeholders. Prior to the hearing OP will provide a supplemental report on any changes to the model and an analysis of any resulting changes.

## **APPENDIX I – PROPOSED TEXT AMENDMENT**

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** text).

### **I. Proposed Amendment to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES**

The definition of “Inclusionary Development” in § 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is proposed to be amended by revising the to read as follows:

...<sup>2</sup>

Inclusionary Development: A residential development that is subject to the provisions of Subtitle C, Chapter 10, Inclusionary Zoning, as a Mandatory **Inclusionary Development (including an IZ Plus Inclusionary Development)** or Voluntary Inclusionary Development, or that is required to comply with the provisions therein by an order of the Zoning Commission or of the Board of Zoning Adjustment, as established by Subtitle C § 1001.2.

...

### **II. Proposed Amendment to Subtitle C, GENERAL RULES**

Subsections 1001.2 and 1001.4 of § 1001, APPLICABILITY, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:

1001.2 Except as provided in Subtitle C § 1001.5, the requirements of this chapter shall apply to, and the modifications to certain development standards and bonus density of this chapter shall be available to, developments in zones in which this chapter is identified as applicable as specified in the individual subtitles of this title; provided the development falls into one of the following categories:

- (a) A “Mandatory Inclusionary Development” – a development that meets one or more of the following ...
  - (1) Is proposing new gross floor area ...
  - (2) Will have ten (10) or more new dwelling units constructed concurrently ... for the first building permit; ~~or~~
  - (3) Consists of a residential building that has penthouse habitable space pursuant to Subtitle C § 1500.11; or

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<sup>2</sup> The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

**(4) An “IZ Plus Inclusionary Development” – a development located on property that was the subject of a map amendment that increased the allowable FAR pursuant to Subtitle X § 502 and as indicated with an “IZ+” on the Zoning Map and that meets one of the categories of Subtitle C § 1001.2(a)(1) through (3); or**

- (b) A “Voluntary Inclusionary Development” – any single household ...
  - (1) The square footage ...
  - ...
  - (3) Any use of the modifications of development standards ... and to Subtitle D § 5206, Subtitle E § 5206, or Subtitle F § 5206, as applicable.
  - ...

1001.4 For existing buildings that become subject to the requirements of this chapter pursuant to Subtitle C § 1001.2, the requirements of Subtitle C §§ 1003.1 ~~and 1003.2~~ **through 1003.4** and the available modifications to applicable development standards shall apply:

- (a) To both the existing and new gross floor area if the new gross floor area:
  - (1) Utilizes the bonus density provided by Subtitle C § 1002; or
  - (2) Results in an increase of fifty percent (50%) or more in the building’s existing gross floor area; and
- (b) To only the new gross floor area if it:
  - (1) Does not utilize the bonus density provided by Subtitle C § 1002; and
  - (2) Does not result in an increase of fifty percent (50%) or more in the building’s existing gross floor area.

**Subsections 1002.3 of § 1002, MODIFICATIONS OF DEVELOPMENT STANDARDS AND BONUSES TO INCENTIVIZE INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1002.3 Inclusionary Developments, except those located in the R, RF, SEFC, HE, NHR, StE, and WR zones, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right (“bonus density”) as reflected in the zone-specific development standards and subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act.

**Section 1003, SET-ASIDE REQUIREMENTS, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1003.1 An Inclusionary Development **other than an IZ Plus Inclusionary Development which that** does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units and which is located in a zone with a by-right height limit, exclusive of any bonus height, of fifty feet (50 ft.) or less, shall set aside for Inclusionary Units the sum of the following:

- (a) The greater of ten percent (10%) of the **residential** gross floor area **dedicated to residential use as described in Subtitle C § 1003.5**, excluding penthouse habitable space,<sup>2</sup> or seventy-five (75%) of the bonus density utilized; and
- (b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1500.11<sup>3</sup>.

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § ~~1003.4~~ **1003.6**.

1003.2 An Inclusionary Development **other than an IZ Plus Inclusionary Development which that** employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, or which is located in a zone with a by-right height limit, exclusive of any bonus height, that is greater than fifty feet (50 ft.), shall set aside for Inclusionary Units the sum of the following:

- (a) The greater of eight percent (8%) of the **residential** gross floor area **dedicated to residential use as described in Subtitle C § 1003.5**, excluding penthouse habitable space,<sup>2</sup> or fifty (50%) of the bonus density utilized; and
- (b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11<sup>4</sup>.

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § ~~1003.4~~ **1003.6**.

**1003.3 An IZ Plus Inclusionary Development that does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, and which is located in a zone with a by-right height limit, exclusive of any bonus height, of eighty-five feet (85 ft.) or less, shall set aside for Inclusionary Units the sum of (a) and (b):**

- (a) The percent of the residential gross floor area as described in Subtitle C § 1003.5, excluding penthouse habitable space, set forth in the following table, based on the increase in FAR established in the Zoning Commission order approving the map amendment pursuant to Subtitle X §§ 502.3 and 502.4:**

<sup>3</sup> Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in ZC Case No. 14-13E.

<sup>4</sup> Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in ZC Case No. 14-13E.

**TABLE C § 1003.3 SET-ASIDE FOR INCLUSIONARY UNITS**

<u>Increase in FAR</u>	<u>0.25-0.50</u>	<u>0.51-1.00</u>	<u>1.01-1.50</u>	<u>1.51 or Above</u>
<u>Set-Aside Requirement</u>	<u>14%</u>	<u>16%</u>	<u>18%</u>	<u>20%</u>

**(b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1500.11<sup>5</sup>.**

**This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6.**

**1003.4 An IZ Plus Inclusionary Development that employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, or which is located in a zone with a by-right height limit, exclusive of any bonus height, that is greater than eighty-five feet (85 ft.), shall set aside for Inclusionary Units the sum of (a) and (b):**

**(a) The percent of the residential gross floor area as described in Subtitle C § 1003.5, excluding penthouse habitable space, set forth in the following table, based on the increase in FAR established in the Zoning Commission order approving the map amendment pursuant to Subtitle X §§ 502.3 and 502.4:**

**TABLE C § 1003.4 SET-ASIDE FOR INCLUSIONARY UNITS**

<u>Increase in FAR</u>	<u>0.25-0.50</u>	<u>0.51-1.00</u>	<u>1.01-1.50</u>	<u>1.51-2.00</u>	<u>2.01-2.50</u>	<u>2.51 or Above</u>
<u>Set-Aside Requirement</u>	<u>10%</u>	<u>12%</u>	<u>14%</u>	<u>16%</u>	<u>18%</u>	<u>20%</u>

**(b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11<sup>6</sup>.**

**This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6.**

**1003.8 1003.5 An Inclusionary Development's For the purposes of this section, "residential gross floor area" shall be the entire residential floor area including, but not limited to:**

**(a) Dwelling dwelling units located in cellar space; ~~or~~**

**(b) Enclosed enclosed building projections that extend into public space, shall be included for purposes of calculating the minimum set-aside requirements of Subtitle C §§ 1003.1 and 1003.2.; and**

<sup>5</sup> Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in ZC Case No. 14-13E.

<sup>6</sup> Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in ZC Case No. 14-13E.

~~1003.10~~ (c) Increases in FAR ~~as a result of authorized by~~ variances granted by the Board of Zoning Adjustment ~~shall be included within gross floor area for the purposes of calculating the maximum IZ requirement.~~

~~1003.4~~ 1003.6 The square footage required to be set-aside for Inclusionary Units pursuant to Subtitle C §§ 1003.1 ~~and 1003.2 through 1003.4~~ shall be converted to net square footage based on the ratio of net residential floor area ...

~~1003.3~~ 1003.7 Except as provided in Subtitle C §§ ~~1003.5 and 1003.6~~ 1003.8 through 1003.11, Inclusionary Zoning resulting from the set-asides required by Subtitle C §§ 1003.1 ~~and 1003.2 through 1003.4~~ shall be reserved for households earning equal to or less than:

- (a) Sixty percent (60%) of the MFI for rental units; and
- (b) Eighty percent (80%) of the MFI for ownership units.

~~1003.7~~ 1003.8 ~~Notwithstanding Subtitle C § 1003.3, one~~ One hundred percent (100%) of ~~i~~Inclusionary ~~u~~Units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible households earning equal to or less than fifty percent (50%) of the MFI.

1003.9 Except for Inclusionary Units resulting from the set-aside required for penthouse habitable space, The the square footage set aside established by Subtitle C §§ 1003.1 through 1003.4 applicable to an ~~inclusionary development that is exclusively comprised of ownership units~~ Inclusionary Development may be reduced by twenty percent (20%) ~~provided if it complies with one or more of the following:~~

- (a) all the All Inclusionary uUnits are ownership units and are set aside to households earning equal to or less than sixty percent (60%) of the MFI;
- (b) One hundred percent (100%) of Inclusionary Units in an IZ Plus Inclusionary Development are reserved for households earning equal to or less than fifty percent (50%) of the MFI; or
- (c) Fifty percent (50%) or more of Inclusionary Units in an IZ Plus Inclusionary Development are three (3) bedroom or larger units.

1003.10 An applicant requesting a reduction in the set-aside requirement in accordance with Subtitle C § 1003.9(c) shall provide to the Director of the Office of Planning at the time of filing with the Zoning Administrator the following:

- (a) A study demonstrating demand for three (3) bedroom or larger Inclusionary Zoning units in the surrounding neighborhood;

- (b) **A floor plan demonstrating that three (3) bedroom or larger units represent a minimum of twenty percent (20%) of all units within the IZ Plus Inclusionary Development; and**
- (c) **A site plan demonstrating access to either active outdoor space located on the premises or in the surrounding neighborhood.**

**The Director shall, within forty-five (45) days of the filing, provide the Zoning Administrator with a memorandum setting forth the Office of Planning’s interpretation of compliance with this subsection.**

~~1003.5~~ **1003.11** An Inclusionary Development that results from a conversion of a single dwelling unit or flat to a multiple dwelling unit development in an RF zone for four (4) or more dwelling units approved by the Board of Zoning Adjustment shall set aside every even numbered dwelling unit beginning at the fourth (4<sup>th</sup>) unit as an inclusionary unit.  
~~1003.6~~ ~~— An Inclusionary Development that results from a conversion of single dwelling unit or flat to a multiple dwelling unit in an RF zone for four (4) or more dwelling units approved by the Board of Zoning Adjustment shall set aside one hundred percent (100%) of inclusionary units reserved~~ for eligible households earning equal to or less than eighty percent (80%) of the MFI.

**Paragraph (c) of § 1006.2 of § 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

- 1006.2 Among the factors that may be considered by the Board of Zoning Adjustment in determining the existence of economic hardship are:
- (a) Exceptionally high fees ...
  - (b) The inclusion of expensive and specialized social or health services ...
  - (c) Proof that continuation of the existing rental inclusionary development is no longer economically feasible, when the owner wishes to change the property’s use to a non-residential use or to one (1) meeting the exemption requirements of Subtitle C §§ 1001.5 **and 1001.6(b) and (c).**

### **III. Proposed Amendment to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES**

**Subsection 105.1<sup>7</sup> of § 105, INCLUSIONARY ZONING, of Chapter 1, INTRODUCTION TO RESIDENTIAL APARTMENT (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:**

- 105.1 The Inclusionary Zoning (IZ) requirements, and the available IZ modifications to certain development standards and bonus density, shall apply to all RA zones as

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<sup>7</sup> Subtitle F § 105.1 is proposed to be amended by the proposed text amendment in ZC Case No. 19-27A. Upon final action in that case, this proposed revision will be updated to reflect the new text.

specified in Subtitle C, Chapter 10, Inclusionary Zoning, and the zone-specific development standards of this subtitle, except for the RA-5 and RA-10 zones in which the IZ requirements, modifications, and bonus density shall not apply-**provided that IZ Plus Inclusionary Developments that are located in the RA-5 and RA-10 zones shall be subject to the IZ requirements of Subtitle C, Chapter 10.**

**Subsection 302.2<sup>8</sup> of § 302, DEVELOPMENT STANDARDS, of Chapter 2, DEVELOPMENT STANDARDS RESIDENTIAL APARTMENT (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:**

302.2       **The Except for IZ Plus Inclusionary Developments, the** Inclusionary Zoning (**IZ**) requirements, modifications, and bonus density of Subtitle C, Chapter 10, shall not apply to the RA-5 zone.

#### **IV. Proposed Amendment to Subtitle G, MIXED-USE (MU) ZONES**

**Subsection 104.1<sup>9</sup> 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 read as follows:**

104.1       The Inclusionary Zoning (IZ) requirements, and the available IZ modifications and bonus density, shall apply to all MU zones, except for the portion of the MU-13 zone in the Georgetown Historic District and the MU-27 zone, as specified in Subtitle C, Chapter 10, Inclusionary Zoning, and in the zone-specific development standards of this subtitle; provided that new penthouse habitable space, as described in Subtitle C § 1500.11, **and IZ Plus Inclusionary Developments**, that **is are** located in the portion of the MU-13 zone in the Georgetown Historic District or in the MU-27 zone shall be subject to the IZ requirements **of Subtitle C, Chapter 10.**

**Subsection 504.3<sup>10</sup> 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 read as follows:**

504.3       Except for new penthouse habitable space, as described in Subtitle C § 1500.11, **and IZ Plus Inclusionary Developments**, the Inclusionary Zoning (**IZ**) requirements, and modifications of Subtitle C, Chapter 10, shall not apply to the portion of the MU-13 zone in the Georgetown Historic District.

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<sup>8</sup> Subtitle F § 302.2 is proposed to be amended by the proposed text amendment in ZC Case No. 19-27. Upon final action in that case, this proposed revision will be updated to reflect the new text.

<sup>9</sup> Subtitle G § 104.1 is proposed to be amended by the proposed text amendment in ZC Case No. 19-27A. Upon final action in that case, this proposed revision will be updated to reflect the new text.

<sup>10</sup> Subtitle G § 504.3.1 is proposed to be amended by the proposed text amendment in ZC Case No. 19-27A. Upon final action in that case, this proposed revision will be updated to reflect the new text.



**Subsection 804.3<sup>11</sup> of § 804, LOT OCCUPANCY, of Chapter 8, NAVAL OBSERVATORY MIXED-USE ZONE – MU-27, of Subtitle G, MIXED-USE (MU) ZONES, is proposed to be amended to read as follows:**

804.3 Except for new penthouse habitable space, as described in Subtitle C § 1500.11, **and IZ Plus Inclusionary Developments**, the Inclusionary Zoning (**IZ**) requirements, and modifications of Subtitle C, Chapter 10, shall not apply to the MU-27 zone.

**V. Proposed Amendment to Subtitle I, DOWNTOWN (D) ZONES**

**Subsection 502.3 of § 502, DENSITY – FLOOR AREA RATIO (FAR) (D-1-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

502.3 **Residential Except for IZ Plus Inclusionary Developments, residential** density in the D-1-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter ~~9~~ **10**.

**Subsection 516.2 of § 516, DENSITY – FLOOR AREA RATIO (FAR) (D-3), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

516.2 **Residential Except for IZ Plus Inclusionary Developments, residential** density **in the D-3 zone** is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 531.4 of § 531, DENSITY – FLOOR AREA RATIO (FAR) (D-4-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

531.4 **Residential Except for IZ Plus Inclusionary Developments, residential** density in the D-4-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 539.2 of § 539, DENSITY – FLOOR AREA RATIO (FAR) (D-5), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

539.2 **Residential Except for IZ Plus Inclusionary Developments, residential** density in the D-5 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

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<sup>11</sup> Subtitle G § 804.3.1 is proposed to be amended by the proposed text amendment in ZC Case No. 19-27A. Upon final action in that case, this proposed revision will be updated to reflect the new text.

**Subsection 547.3 of § 547, DENSITY – FLOOR AREA RATIO (FAR) (D-5-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

547.3 Except for Square 487 and IZ Plus Inclusionary Developments, residential density in the D-5-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 555.2 of § 555, DENSITY – FLOOR AREA RATIO (FAR) (D-6), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

555.2 ~~Residential~~ Except for IZ Plus Inclusionary Developments, residential density in the D-6 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 562.3 of § 562, DENSITY – FLOOR AREA RATIO (FAR) (D-6-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

562.3 ~~Residential~~ Except for IZ Plus Inclusionary Developments, residential density in the D-6-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 569.2 of § 569, DENSITY – FLOOR AREA RATIO (FAR) (D-7), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

569.2 ~~Residential~~ Except for IZ Plus Inclusionary Developments, residential density in the D-7 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**VI. Proposed Amendment to Subtitle K, SPECIAL PURPOSE ZONES**

**Subsections 500.4 and 500.6 of § 500, GENERAL PROVISIONS, of Chapter 5, CAPITOL GATEWAY ZONES – CG-1 THROUGH CG-7, of Subtitle K, SPECIAL PURPOSE ZONES, are proposed to be amended to read as follows:**

500.4 **The** Inclusionary Zoning (IZ) development standards for the CG zones are as established in this chapter and indicated by the abbreviation IZ, and all other Inclusionary Zoning requirements for the CG zones are as specified in Subtitle C, Chapter 10, including IZ Plus Inclusionary Developments.

...

500.6 ~~The~~ Except for IZ Plus Inclusionary Developments, the Inclusionary Zoning requirements, modifications, and bonus density of Subtitle C, Chapter 10, shall not apply to the CG-1 zone, provided that the IZ bonus density of Subtitle C § 1002.3 is available for Voluntary Inclusionary Developments in the CG-1 zone.

**VII. Proposed Amendment to Subtitle U, USE PERMISSIONS**

**Paragraph (b) of § 320.2 of § 320, SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is amended to read as follows:**

320.2 The conversion of an existing residential building ... and subject to the following conditions:

- (a) The building to be converted or expanded ...
- (b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § ~~1003.6~~ **1003.11**; and
- (c) There shall be a minimum ...

**VIII. Proposed Amendment to Subtitle X, GENERAL PROCEDURES**

**The title of § 500, MAP AMENDMENTS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended to read as follows:**

**500 MAP AMENDMENTS AMENDMENT REVIEW STANDARDS**

**Subsection 500.1 of § 500, MAP AMENDMENT REVIEW STANDARDS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended to read as follows:**

500.1 The Zoning Commission will evaluate and approve, disapprove, or modify a map amendment application or petition according to the standards of this ~~section~~ **chapter**.

**Section 501, APPLICATION OR PETITION REQUIREMENTS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended to read as follows:**

501.1 An application ~~or~~ **or** petition for a map amendment shall meet the requirements of Subtitle Z § 304.

**A new § 502, is proposed to be added to Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, to read as follows:**

**502 APPLICABILITY OF INCLUSIONARY ZONING PLUS**

**502.1 Except as provided in Subtitle X § 502.2, the requirements of this section shall apply to:**

- (a) A map amendment that rezones a property:**

- (1) From a PDR zone to a R, RF, RA, MU, D, CG, or ARTS zone;
- (2) From any zone with a prescribed residential FAR to a D zone without a prescribed residential FAR; or
- (3) From unzoned to a R, RF, RA, MU, D, CG, or ARTS zone; or
- (b) A map amendment not described in Subtitle X § 502.1(a), which rezones a property from any zone to a zone that allows a higher maximum residential FAR, both inclusive of the twenty percent (20%) IZ bonus density, if applicable.

502.2 The requirements of this section shall not apply to a map amendment that:

- (a) Is related to a PUD application;
- (b) Is to a BR, HE, NHR, SEFC, StE, USN, or WR zone; or
- (c) The Zoning Commission determines is not appropriate for IZ Plus due to the mitigating circumstances identified by the Office of Planning in its report recommending that the map amendment not be subject to IZ Plus.

502.3 In its order approving a map amendment subject to Subtitle § 502.1(a), the Zoning Commission shall establish the increase in permitted residential FAR as 2.51 FAR.

502.4 In its order approving a map amendment subject to Subtitle § 502.1(b), the Zoning Commission shall establish the increase in permitted residential FAR as follows:

- (a) The difference between the maximum permitted residential FAR of the new zone (inclusive of the twenty percent (20%) IZ bonus density, if applicable) and that of the existing zone (exclusive of the twenty percent (20%) IZ bonus density, if applicable); and
- (b) For computation purposes of this subsection, the R-1 and R-2 zones shall have a FAR equivalent to 0.4, the R-3 zones shall have a FAR equivalent to 0.6, and the RF-1 zones shall have a FAR equivalent to 0.9.

502.5 Property subject to a map amendment subject to the requirements of this section shall be indicated with a “IZ+” symbol on the Zoning Map.

#### IX. Proposed Amendment to Subtitle Z, ZOING COMMISSION RULES OF PRACTICE AND PROCEDURE

Subsection 400.5 of § 400, SETDOWN PROCEDURES: SCHEDULING CONTESTED CASE APPLICATIONS FOR HEARING, of Chapter 4, PRE-HEARING AND HEARING

**PROCEDURES: CONTESTED CASES, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is proposed to be amended to read as follows:**

400.5 For all other types of applications, the Commission, at a public meeting, shall determine if the application should be scheduled (setdown) for a hearing. The Office of Planning shall review each such application and submit a report ~~and recommend~~ **that recommends** whether the application should be set down for a hearing, **with the report on a map amendment application to include whether the application is:**

- (a) Not inconsistent with the Comprehensive Plan;**
- (b) Consistent with the purpose of the map amendment process;**
- (c) Appropriate for IZ Plus pursuant Subtitle X § 502 including mitigating circumstances, if any; and**
- (d) Generally ready for a public hearing to be scheduled.**

**Subsection 500.5 of § 500, SETDOWN PROCEDURES: SCHEDULING RULEMAKING PETITIONS FOR HEARING, of Chapter 5, PRE-HEARING AND HEARING PROCEDURES: RULEMAKING CASES, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is proposed to be amended to read as follows:**

500.5 For all petitions, the Commission, at a public meeting, shall determine if the petition should be scheduled (setdown) for a hearing. The Office of Planning shall review ~~and recommend~~ **the petition and submit a report that recommends** whether the petition should be set down for a hearing, **with the report on a map amendment petition to include whether the petition is:**

- (a) Not inconsistent with the Comprehensive Plan;**
- (b) Consistent with the purpose of the map amendment process;**
- (c) Appropriate for IZ Plus pursuant Subtitle X § 502 including mitigating circumstances, if any; and**
- (d) Generally ready for a public hearing to be scheduled.**