



May 28, 2021

## **ZC Case 20-02: Comments by the Committee of 100 on the Notice of Third Proposed Rulemaking on Text Amendments to Subtitles B, C, F, G, I, K, U, X and Z for Inclusionary Zoning Plus**

This letter responds to the Notice of Third Proposed Rulemaking for Inclusionary Zoning Plus published in the DC Register on May 21, 2021 (the “Notice”). The Committee of 100 on the Federal City (“C100”) has consistently advocated for more affordable housing within the City. While we share with the Zoning Commission (the “Commission”) the goal of creating more affordable units, the tortured history of IZ Plus demonstrates the complexities in creating a rule that will result in more affordable housing in cases where, because of a map amendment, property is upzoned. The proposal has already been the subject of two proposed rulemaking proceedings. This is a third attempt. C100 recommends that the Commission take the time needed to make sure it gets to a solution that accomplishes what the Office of Planning says is intended: fulfilling the District’s goal of ensuring housing equity throughout the entire city by the production of additional affordable housing.

Expanded Inclusionary Zoning, or IZ Plus, would apply when a property owner requests a map amendment to rezone a lot to a higher density than what is permitted by the current zoning classification. Given revisions to the Future Land Use Map recently approved by the DC Council, it can be expected that the volume of rezoning requests will increase. The Commission should ensure that such upzoning will result in more affordable housing. The results from the Regular IZ Program have been meager. As stated in the FY2019 Inclusionary Zoning Annual Report, inclusionary zoning produced only 196 affordable units in 2019.<sup>1</sup> That same report states that at the end of FY2019, 8,025 households were registered to participate in the lottery under the IZ Program.<sup>2</sup> It is hard to see how much IZ Plus, as currently proposed, will accomplish to close the supply/demand imbalance. In response to the Second Notice of Proposed Rulemaking, C100 pointed out that the affordable housing benefits will, at best, be minimal. (Exhibit 37) We appreciate that the Commission directed the Office of Planning to take another look at the issues involved. Unfortunately, as pointed out in more detail in this comment, the deficiencies with IZ Plus remain. Overall, C100 continues to believe that the program will benefit

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<sup>1</sup> FY2019 Inclusionary Zoning Annual Report (Exhibit 32), published by Mayor Muriel Bowser and the Department of Housing and Community Development, p. 4.

<sup>2</sup> Id., p.8, footnote 8.

developers without making much of a dent in the City's affordable housing need, especially at the lowest income levels.

### **Regulatory History of OP's IZ Plus Proposal**

The docket for IZ Plus (Case No. 20-02) reveals OP's willingness to bend over backwards to adopt the positions of the District of Columbia Building Industry Association ("DCBIA"). Prior to the initial public hearing on the proposal, OP in a Supplemental Report (Exhibit 18) said it had continued to analyze the comments provided by DCBIA and others and, based on this feedback, had amended the proposal from the initial approach of using an escalating Floor-Area-Ratio (FAR) in increments of 0.5 proposed in the public hearing report (Exhibit 12) to a system that instead uses a sliding scale of percent-increase in density.

On December 28, 2020, the final day for the public to comment on the original (First) Notice of Proposed Rulemaking, DCBIA submitted a comment requesting that: (1) the IZ Plus requirement be calibrated to the density that is utilized because of a map amendment; and (2) the IZ Plus requirement be calibrated to the matter of right density gained through the map amendment over the matter of right density in the supplanted zone. DCBIA describes its proposed calculation as an "apples to apples" measure. (Exhibit 33) In response, on January 21, 2021, OP revised its IZ Plus proposal, discarding the measure it had advertised to the public and substituting for it DCBIA's formula. In effecting the substitution, OP stated that: (1) the proposal should be revised to tie the Expanded IZ set-aside requirement to the "achievable" Expanded IZ density actually utilized in a project in the new zone, not to the potential maximum increase in density between the current and new zones; and (2) the calculation should be "apples-to-apples," based on the total change in density from the base zone without IZ bonus density to the total FAR utilized by the IZ Plus Inclusionary Development in the new zone. (Exhibit 34A) On these two points, OP appears to have been singing DCBIA's tune.

In response, the Commission reopened the comment period for seven days to allow the public to respond to the new proposed formula advocated by DCBIA. C100's response was the only comment submitted. Among other comments, C100 called out the deletion of the "bonus density" arm of the two-prong test applicable to Regular IZ. Also, using an example of a possible redevelopment of the Mazza Gallerie site in Friendship Heights, C100 demonstrated how under IZ Plus a map amendment could result in a significantly lower IZ set-aside than under Regular IZ with lower zoning. The Commission nonetheless approved the proposed text amendment.

Subsequently, the Commission apparently asked OP to review the issues raised in C100's comment, and OP issued a proposed amendment. On April 29, 2021, the Commission decided to rescind its prior approval of IZ Plus and asked OP to incorporate the revision into a combined proposed rule, which would be released with a truncated 7-day comment period.

### **Concerns and Comments**

1. Reinstatement of the "bonus density" calculation is a positive. First of all, C100 wants to thank OP and the Commission for recognizing the deficiencies in the Text Amendment that was approved on March 11, 2021, and the willingness to address the comments submitted by C100, particularly by adding

a “bonus density” factor to the IZ requirement. In fact, the bonus density test has been raised from that in Regular IZ, a positive development. We also commend OP for eliminating the height-based criterion for determining whether, under the bonus density calculation, an inclusionary development comes under the requirement for non-Type I construction (“stick built”) or the lower requirement for Type I construction (concrete and steel) for a majority of dwelling units. This welcome change from Regular IZ reflects advances in construction technology.

2. The Revised Rule Does Not Deliver on the Promise of More Affordable Units. The main problem with the revised proposed rule is that it still will not result in an increase in affordable units commensurate with the increase in density allowed by a map amendment. Under the revised proposal, the IZ set-aside depends on the percent increase in total FAR due to a map amendment, the amount of non-residential square footage, the amount of bonus density utilized and whether a project qualifies for the 20 percent IZ reduction (for projects with at least 50% of the Inclusionary Units being 3-bedrooms or larger and projects with aggressive affordability requirements). As shown on the following table, our calculations demonstrate that the upzoning of a 50,000 SF property from MU-4 to MU-7 with ground floor retail (a likely project in our view) could result in a 53.3% increase in density, but only a 34.4% increase in the set-aside (7.5% if a project qualifies for the 20% IZ reduction).

Project Description	MU-4 IZ Project Size	MU-4 IZ Set-Aside Requirement	MU-7 IZ Plus Project Size	MU-7 IZ Plus Set-Aside Requirement	Percent increase in density	Percent increase in set-aside requirement
MU-7 IZ Plus 230,000 SF, with 50,000 SF non-res  More than half units are concrete and steel	150,000 SF	18,750 SF (12.5% of project)	230,000 SF	25,200 SF (10.96% of project)	<b>53.3%</b>	<b>34.4%</b>
MU-7 IZ Plus 230,000 SF, with 50,000 SF non-res  More than half units are concrete and steel and at least 50% of the IZ units are 3 bedroom units	150,000 SF	18,750 SF (12.5% of project)	230,000 SF	20,160 SF (8.8% of project)	<b>53.3%</b>	<b>7.5%</b>

Further, nothing would appear to prohibit a developer from requesting a map amendment to a higher zone than actually needed. As higher zones allow for more base density before beginning to utilize bonus density, the calculation under the bonus density arm would be lower. This opens up an

opportunity for a developer to “game” the formula, since less of the allowed bonus density would be utilized.

3. Need for Examples. In their Set-Down Report dated January 3, 2020 and Set-Down and Prehearing Report dated September 4, 2020<sup>3</sup>, OP provided examples of how the new IZ Plus calculation would work. Examples are notably absent from the five subsequent reports (or supplemental reports) filed by OP and from the Third Notice of Proposed Rulemaking. Examples would reveal the extent of the increase or decrease in any affordable housing benefit between IZ Plus and regular IZ. As noted, C100 provided an example in our comment on the Second Notice of Proposed Rulemaking. Attached, beginning at page 7, is a set of examples based on a series of hypothetical projects with map amendments.

4. Uncertainty Arising from the “Density Utilized” Formula. One issue with the new “density utilized” formula that should be considered is what would happen down the road in cases where a developer is granted a map amendment but only partially utilizes the full density permitted in the new zone. In this case, the developer’s required set-aside would be based on the percent increase (from the MOR FAR for the new zone) in total FAR utilized. As seen in the attached examples, by not utilizing the entire IZ bonus density in the new zone but utilizing the entire increase in density allowed by the map amendment, the developer can have a very low “IZ bonus density utilized,” even though the project is substantially larger than a MOR project in the original zone. Nothing however would prevent the owner from later redeveloping the property to greater density without a map amendment. In this case the IZ set-aside for the property (including both the original development and the revision) should be recalculated to take into consideration the percent increase in total FAR utilized. C100 recommends that the proposed rule be revised to address this situation.

5. IZ Eligibility. Under the Notice, the current definition of who qualifies for an inclusionary unit is retained (generally, 60% of MFI for rental units and 80% of MFI for ownership units). Given higher levels of income in the Washington metropolitan area, this income test is relatively easy to meet. Consistent with recent action by the DC Council to lower affordability standards, C100 suggests that the Commission consider lowering the maximum incomes and rents to provide better access to housing for those who need it. We acknowledge that the proposal does have an exception for projects where all ownership units are set aside for households earning less than 60% of MFI or where all rental units are set aside for households earning less than 50% of MFI. However, in these cases, the project’s set aside is reduced by twenty percent. C100 suggests that the Commission consider applying the provisions to all inclusionary development, but without discounting the IZ commitment.

6. The Authorization for OP to Propose an Alternative Zone on a Case-by-Case Basis Fails for Vagueness. In the Notice of Third Proposed Rulemaking, OP states that it is adding new sections 502.6 and 502.7 to Subtitle X of the Zoning Regulations to explicitly authorize OP to propose, and the Commission to adopt, an alternative zone to the one requested in an IZ Plus application. According to the April 19, 2021 OP Report, an alternative zone might be considered “where the mixed use nature of the zone could result in less required IZ square footage than would be produced without a map

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<sup>3</sup> Exhibit 2, pp. 7-8; Exhibit 6, pp. 6-7.

amendment.”<sup>4</sup> This is exactly the type of situation identified by C100 in our previous filing. (Exhibit 37)

The alternative map amendment might, for example, limit non-residential space to an FAR of 1.0. However, for the reasons explained below, this revision does not “successfully respond to the public comments to ensure that additional IZ units are created with additional density granted by map amendments.”

First, as demonstrated in the attachment, limiting non-residential FAR to 1.0 does not ensure that IZ Plus will produce significantly higher set-aside requirements.<sup>5</sup>

In addition, IZ Plus applies to a map amendment only if it is not related to a PUD application. (Subtitle X §502.2) Therefore, the application for a map amendment that triggers IZ Plus will not include specific information on a proposed project.<sup>6</sup> The case-by-case analysis OP proposes will not be based on a binding development proposal. How will OP be able to determine the IZ Plus square footage requirement? Also, it is unclear what would trigger any such optional review or what criteria OP would use in selecting a new zone. Further, it might not be consistent with good planning principles to limit non-residential FAR to 1.0, if for that area more non-residential use would be appropriate.

Overall, this aspect of the proposed Text Amendment is just too vague. OP should be directed to go back to the drawing board to craft a revised proposal that clearly establishes a significantly higher set-aside requirement when there has been a map amendment that significantly increases the allowable density and intensity of use on a site.

7. Procedural Deficiency. The public is given only seven days to review and file comments on the Third Notice of Proposed Rulemaking. Further, it does not appear that the Commission will accept oral testimony, as the deliberation is scheduled as a public meeting rather than a public hearing. As shown by the history of the proposal and the comments above, IZ Plus is a complicated proposal that deserves more extensive review and consideration. The goal should be to get this right, not to rush to a half-baked decision, as has been the case.

8. Planned Unit Developments. The proposal currently specifically excludes map amendments proposed in connection with a PUD. At the original set-down hearing on January 13, 2020, two Commissioners questioned this PUD exclusion. While C100 understands that there may be other public benefits in a PUD, the exclusion means that a PUD application with a map amendment could have a

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<sup>4</sup> ZC Case 20-02, Exhibit 40, Corrected OP Supplemental Report, April 22, 2021, page 1. This OP Report also includes the following description at page 3: “A review of the zone districts, especially the MU (Mixed-Use) zones reveals that the medium and higher density zones all have a non-residential component that could result in less residential use thereby making it harder to assess the affordable housing. OP will be bringing forward a few new zones that will allow medium and high density residential as a matter-of-right with a limit of only 1.0 FAR for non-residential uses. These new zones will further the potential achievement of IZ Plus. OP will file these new zones as a separate case.”

<sup>5</sup> See, for example, case of a map amendment from MU-4 to MU-7, with non-residential FAR limited to 1.0, where, the percent increase in density (over MU 4 with IZ) was 53.3%, but with MU-7 and IZ-Plus, set-aside requirement was only 7.5% higher than for the MU-4 IZ project.

<sup>6</sup> Since the project would not be a PUD, even if an example of a project that is consistent with the requested zone was submitted, and the IZ square footage of that example would achieve the goals of IZ-Plus and the Comprehensive Plan, once the map amendment was approved, the applicant would be entitled to build any project within the new limits and IZ-Plus, even if the IZ-Plus square footage requirement would produce less IZ square footage than would be produced without a map amendment.

lesser IZ requirement than a non-PUD map amendment application. In these cases, the Commission should use the IZ Plus standard as a guide in evaluating the PUD application.

9. Great Weight. The Third Notice of Proposed Rulemaking suggests that the Commission give “great weight” to OP’s recommendation.<sup>7</sup> While recommendations of OP are generally given great weight, C100 questions whether this is appropriate in cases where the proposed action before the Commission arises directly from an OP proposal, rather than from an application by a third party.

### **Conclusion**

C100 appreciates that the Commission directed the Office of Planning to take another look at the issues involved with IZ Plus. Unfortunately, C100 continues to believe that, overall, the program will benefit developers without making much of a dent in the City’s affordable housing need, especially at the lowest income levels. In this instance, OP’s third time is not the charm. The history of this proposal points out the complexities involved. The Commission should take the time needed to make sure it gets this right. Also, following the DC Council’s lead, the Commission should mandate deeper affordability requirements.

C100 stands ready to answer any questions you might have.

Thank you.

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<sup>7</sup> OP also suggests that the views expressed by ANC3E in a resolution approved on November 12, 2020 and filed as Exhibit 12 be given great weight. Since the ANC’s adoption of that resolution, the text amendment has been changed three times, and the deficiencies of the original proposal have been aired and recognized, including by OP.

NOTICE OF THIRD PROPOSED RULEMAKING: ZC CASE 20-02  
(OFFICE OF PLANNING - TEXT AMENDMENT TO SUBTITLES B, C, F, G, I, K, U, X, AND Z FOR INCLUSIONARY ZONING PLUS)  
THE CURRENT PROPOSAL WILL NOT NECESSARILY RESULT IN A SIGNIFICANT INCREASE IN AFFORDABLE HOUSING  
WITH A MAP AMENDMENT RELATED TO UPFLUMING  
FROM LOW DENSITY COMMERCIAL TO MODERATE DENSITY COMMERCIAL

In this Notice, the Commission concludes that these “proposed revisions successfully respond to the public comments to ensure that additional IZ units are created with additional density granted by map amendments.” In fact, these revisions are not sufficient to ensure that additional IZ units will be created with the additional density that is granted by map amendments.

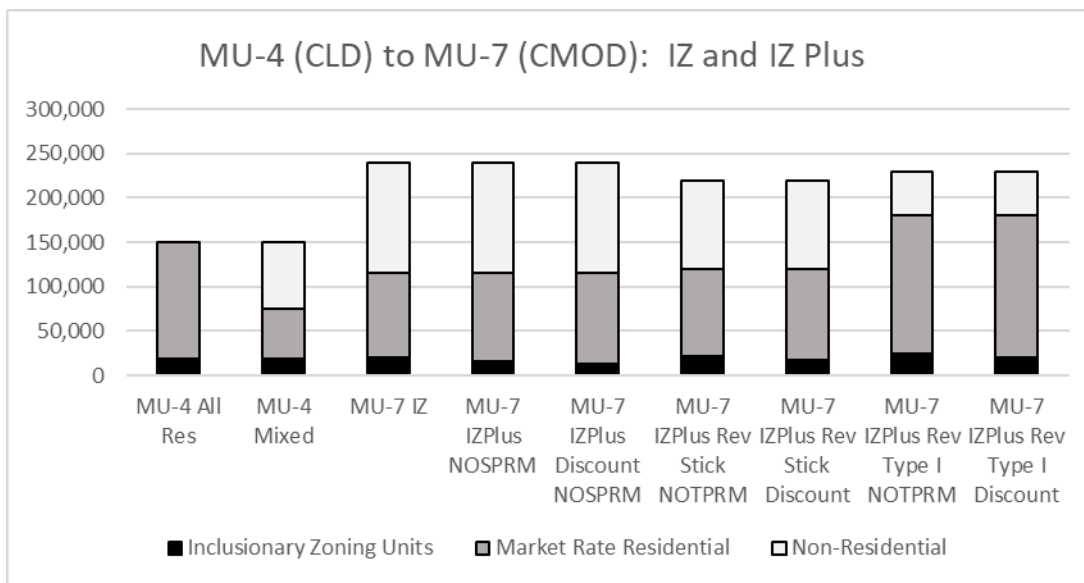
This is demonstrated in the following examples for development of a 50,000 SF site where the FLUM designation is changed from low density commercial (CLD) to moderate density commercial (CMOD). This type of FLUM change is in the current draft plan for many of the District’s commercial corridors. A map amendment from MU-4 to MU-7 is evaluated.

The following chart shows the square footage for the required inclusionary zoning set-aside, market rate residential units and non-residential uses for the following scenarios:

- (1) Standard Inclusionary Zoning in MU-4. The chart shows both an all-residential building as well as a mixed-use building.
- (2) Standard Inclusionary Zoning with a map amendment to MU-7. The chart shows a mixed-use building, but an all-residential building would have the same set-aside requirement under standard IZ.
- (3) IZ-Plus (based on the Notice of Second Proposed Rulemaking, NOSPRM, ZC 20-02) with a map amendment to MU-7. This is evaluated with both the standard calculation as well as with the 20% reduction in the set-aside requirement in §1003.9, which would have been available for projects where at least 50% of the IZ units have three bedrooms or more and at least 20% of all the units have three bedrooms or more.
- (4) IZ-Plus (based on this Notice, the Notice of Third Proposed Rulemaking, NOTPRM, ZC 20-02) with a map amendment to MU-7. This is evaluated for both stick construction for the majority of the dwelling units (using the set-aside formula in the corrected Notice in §1003.3) and concrete and steel construction (using the set-aside formula in the corrected Notice in §1003.4). In both of these cases, the set-aside requirement is also calculated if the project qualifies for the 20% reduction in the set-aside requirement in §1003.9).

For simplicity, in each case there was no penthouse habitable space, since that would have no effect on the comparisons.

The following chart and table show the required inclusionary zoning set-aside, market rate residential units and non-residential uses in each of these scenarios. It is clear that IZ-Plus as set out in the Notice of Third Proposed Rulemaking, while a slight improvement over the rule set out in the Notice of Second Proposed Rulemaking, does not result in a significant increase in the required inclusionary zoning set-aside, and can actually result in a lower set-aside requirement than would be required under standard IZ for a mixed-use building in MU-4. In these examples, the inclusionary units are a significantly smaller percentage of total floor area with MU-7 and IZ-Plus with this Notice than with standard IZ for an MU-4 building.



**Inclusionary Zoning Set-Aside Requirement: Map Amendment from MU-4 to MU-7  
With Standard IZ, IZ-Plus in Notice of Second Proposed Rulemaking (NOSPRM)  
and IZ-Plus in Notice of Third Proposed Rulemaking (NOTPRM)**

	Total Project Square Footage	Inclusionary Zoning Units (SF)	Market Rate Residential (SF)	Non-Residential (SF)
<b>MU-4: All Residential</b>	<b>150,000 SF</b>	<b>18,750 SF</b>	131,250 SF	0 SF
<b>MU-4: Mixed Use</b>	<b>150,000 SF</b>	<b>18,750 SF</b>	56,250 SF	75,000 SF
<b>MU-7: Standard IZ</b>	<b>240,000 SF</b>	<b>20,000 SF</b>	95,000 SF	125,000 SF
<b>MU-7: IZ-Plus (NOSPRM)</b>	<b>240,000 SF</b>	<b>16,100 SF</b>	98,900 SF	125,000 SF
<b>MU-7: IZ-Plus with §1003.9 Reduction (NOSPRM)</b>	<b>240,000 SF</b>	<b>12,880 SF</b>	102,120 SF	125,000 SF
<b>MU-7: IZ-Plus Stick Built (NOTPRM)</b>	<b>220,000 SF</b>	<b>21,600 SF</b>	98,400 SF	100,000 SF
<b>MU-7: IZ-Plus Stick Built with §1003.9 Reduction (NOTPRM)</b>	<b>220,000 SF</b>	<b>17,280 SF</b>	102,720 SF	100,000 SF
<b>MU-7: IZ-Plus Concrete and Steel (NOTPRM)</b>	<b>230,000 SF</b>	<b>25,200 SF</b>	154,800 SF	50,000 SF
<b>MU-7: IZ-Plus Concrete and Steel with §1003.9 Reduction (NOTPRM)</b>	<b>230,000 SF</b>	<b>20,160 SF</b>	159,840 SF	50,000 SF

**Detailed Descriptions of the Calculations**

**(1) Standard Inclusionary Zoning Calculation of the set-aside requirement in an MU-4 Zone**

In the MU-4 Zone (FLUM designation CLD, low-density commercial), the maximum non-residential floor area ratio (FAR) is 1.5. The maximum total FAR is 2.5, and with the 20% IZ bonus density, the maximum total FAR is 3.0.

This means that on the 50,000 SF lot, the building can be 150,000 SF (FAR 3.0, the floor area is 3 times the land area). The non-residential portion of the building is at most 75,000 SF. We will calculate the IZ set-aside requirement first for an all-residential building (150,000 SF residential), and then with a mixed-use building with 75,000 SF of residential space and 75,000 SF of non-residential space. The bonus density is 20% of the MOR density (FAR 2.5), or 25,000 SF. Since the maximum MOR height in an MU-4 zone is 50 feet, the 10%/75% formula (§1003.1) applies.

One calculates 10% of the residential floor area and 75% of the bonus density utilized, and the set-aside requirement is the larger of the two:



For the all-residential MU-4 project:

10% of 150,000 SF (the residential SF) is 15,000 SF.

75% of 25,000 SF (the bonus density utilized) is 18,750 SF.

The set-aside requirement for the all-residential MU-4 project is the larger of the two: 18,750 SF.

For the mixed-use MU-4 project:

10% of 75,000 SF (the residential SF) is 7,500 SF.

75% of 25,000 SF (the bonus density utilized) is 18,750 SF.

The set-aside requirement for the all-residential MU-4 project is the larger of the two: 18,750 SF.

In each of these cases, the calculation based on bonus density utilized exceeds the calculation based on residential square footage, and all (stick-built) projects in MU-4 with an FAR of 3.0 on a 50,000 SF site with the maximum allowable FAR would have an IZ set-aside requirement of 18,750 SF.

## **(2) Standard Inclusionary Zoning Calculation of the set-aside requirement in an MU-7 Zone**

In the MU-7 Zone (FLUM designation CMOD, moderate-density commercial), the maximum non-residential floor area ratio (FAR) is 2.5. The maximum total FAR is 4.0, and with the 20% IZ bonus density, the maximum total FAR is 4.8.

This means that on the 50,000 SF lot, the IZ building can be 240,000 SF. The non-residential portion of the building is at most 125,000 SF. We will calculate the IZ set-aside requirement for a mixed-use building with 115,000 SF of residential space and 125,000 SF of non-residential space. The bonus density is 20% of the MOR density (FAR 4.0), or 40,000 SF. Since the maximum MOR height in an MU-7 zone is 65 feet, the 8%/50% formula (§1003.2) applies.

One calculates 8% of the residential floor area and 50% of the bonus density, and the set-aside requirement is the larger of the two:

For the mixed-use MU-7 project:

8% of 115,000 SF (the residential SF) is 9,200 SF.

50% of 40,000 SF (the bonus density utilized) is 20,000 SF.

The set-aside requirement for the mixed-use MU-7 project is the larger of the two: 20,000 SF.

Note that for an all-residential MU-7 project, 8% of 240,000 SF (the residential SF) would be 19,200 SF, and the set-aside requirement for the all-residential building (not on the graph) would also be 20,000 SF.

## **(3) IZ-Plus (based on the Notice of Second Proposed Rulemaking, NOSPRM, ZC 20-02, Exhibit 36) Calculation of the Set-Aside Requirement with a map amendment from MU-4 to MU-7**

In the Notice of Second Proposed Rulemaking (NOSPRM) in the calculation of the minimum set-aside requirement for IZ-Plus, the bonus density portion of the calculation was eliminated.

### **Calculation of the IZ-Plus (NOSPRM) set-aside for the MU-7 building**

With IZ-Plus NOSPRM, the bonus density portion of the formula is eliminated. The set-aside requirement is based only on residential floor area. The required percentage is based on the type of construction and the percent increase in total FAR utilized, with the percentage given in Tables C §1003.3 (majority of dwelling units stick built) and C §1003.4 (majority of dwelling units concrete and steel).<sup>8</sup> This calculation assumes that the majority of dwelling units are concrete and steel, and the set-aside formula in §1003.4 applies.

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<sup>8</sup> Note that the language in §1003.5(b) defining the percent increase in total FAR utilized is ambiguous. It is the percent increase from “the maximum permitted FAR of the zone from which the Zoning Commission approved a map amendment subject to Subtitle X §502.1(b), as stated in the Zoning Commission order approving the map amendment, pursuant to Subtitle X §502.4” to the total FAR of the IZ Plus Inclusionary Development. Since the Subtitle defining the maximum permitted FAR includes both the basic FAR limit, in this case 4.0, and the FAR limit with Inclusionary Zoning, in this case 4.8, it is not clear which of these two maximum limits would be used in this calculation. While the proposed regulatory language is ambiguous, it appears from the Notice (NOSPR, page 4), that OP’s intention was to use the limit before applying the IZ bonus density. So, our calculations are based on the assumption that the regulatory language would be revised to clarify that intent.

The standard (without the 20% IZ bonus density) maximum permitted FAR in the MU-4 zone is 2.5. With a land area of 50,000 SF, this would give a maximum permitted SF of 125,000 SF. The project is assumed to utilize the entire 20% bonus density available in the MU-7 zone, and will have 240,000 SF.<sup>9</sup> In this mixed-use project, it is assumed that there is 125,000 SF of non-residential space and 115,000 SF of residential space. There is a 92% increase in total FAR utilized as defined in Subtitle C §1003.5(b). Based on the Table in §1003.4, the set-aside requirement would be 14% of the residential square footage, or 16,100 SF.

If the project qualifies for the 20% reduction in the set-aside requirement by having at least 50% of the IZ units with three bedrooms or more and at least 20% of all the units with three bedrooms or more (§1003.9), the IZ-Plus set-aside requirement in NOSPR is 12,880 SF, significantly less than the requirement for the much smaller MU-4 building. If there was only 50,000 SF on non-residential space in the project and it qualified for the 20% reduction in the requirement, the requirement would be 21,280 SF, only 2,530 SF more than the significantly smaller MU-4 project.

#### **(4) IZ-Plus (based on the Notice of Third Proposed Rulemaking, NOTPRM, ZC 20-02, Exhibit 42): Calculation of the Set-Aside Requirement with a map amendment from MU-4 to MU-7**

In the Notice of Third Proposed Rulemaking (NOTPRM) in the calculation of the minimum set-aside requirement for IZ-Plus, a calculation based on bonus density utilized was restored and the table of set-aside percentages in §1003.3 (stick built) was revised, with one small increase in the percentage for map amendments with density increases up to 20%. Even with the bonus density test restored, the impact of the bonus density test can be lessened or avoided by choosing a map amendment where only a portion of the IZ bonus density will be utilized. As in the earlier proposed rulemaking, the set-aside requirement can be reduced by shifting some residential space to non-residential space in the project.

The IZ-Plus (NOTPRM) set-aside requirement is based on whether the majority of the residential units are stick built (using the computation in §1003.3) or concrete and steel (using the reduced requirements in §1003.4) and whether the residential units are configured so as to qualify for the 20% reduction in the requirement in §1003.9.

##### **(a) Calculation of the IZ-Plus (NOSTRM) set-aside for the MU-7 building (majority of residential units are stick built, §1003.3):**

In this example, we consider a project with a map amendment from MU-4 to MU-7 which does not use the entire 240,000 SF allowed in MU-7, but instead proposes a building with 220,000 SF of which 100,000 SF is non-residential.

The utilized bonus density is the difference between the project size (220,000 SF) and the amount allowed in an MU-7 zone before the IZ bonus density (for a land area of 50,000 SF and a maximum FAR in an MU-7 zone, that is 200,000 SF). The utilized bonus density for this project is 20,000 SF. In §1003.3, the required set-aside is the greater of 95% of the utilized bonus density and the amount based on residential SF.

In this case, 95% of the 20,000 SF utilized bonus density is 19,000 SF.

There is an 76% increase in total FAR utilized as defined in Subtitle C §1003.5(b).<sup>10</sup> According to Table C §1003.3 (NOTPRM), the required set-aside based on residential floor area for projects with an increase over 60% and up to and including 80% is 18%. The calculation, based on 18% of the residential floor area (120,000 SF), is 21,600 SF.<sup>11</sup>

In this case, the calculation based on residential floor area exceeds the calculation based on bonus density and the set-aside requirement for this 220,000 SF stick-built MU-7 project is 21,600 SF.

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<sup>9</sup> Note this is 90,000 SF larger than an IZ project in MU-4, and 115,000 SF larger than the amount allowed in MU-4 before the 20% bonus density associated with mandatory IZ.

<sup>10</sup> As noted above the language in §1003.5(b) defining the percent increase in total FAR utilized is ambiguous. Again, it will be assumed to be based on the increase from the limit before the map amendment without the 20% IZ bonus, and that the language will be revised to clarify this intent.

The MU-7 project is 220,000 SF, and the maximum square footage (before the 20% IZ bonus density in MU-4) is 125,000 SF. The percent increase (from 125,000 to 220,000) is 76%.

<sup>11</sup> Note that, if instead it was assumed that there was only 50,000 SF of non-residential space (one level of non-residential space with 100% lot occupancy) and 170,000 SF of residential space in this largely stick-built MU-7 project, the set-aside requirement with the NOTPRM would be 30,600 SF if it does not qualify for the 20% reduction under §1003.9, and 24,480 SF if it does qualify for the 20% reduction under §1003.9, a 30% increase in the requirement for a building with a 76% increase in density.

For this project, there is a 47% increase in density attributable to the up-FLUMing (comparing the project with what is allowed in MU-4 with the 20% IZ bonus), but there would only be a 15% increase in the set-aside requirement with the Third Proposed Rule-making.

With reduction in set-aside for larger units: If the residential portion of the building is configured with a sufficient number of units with three bedrooms or more to qualify for the 20% reduction in the requirement (§1003.9), the set-aside requirement for this project is reduced to 17,280 SF, less than the required IZ set-aside for the significantly smaller MU-4 IZ project.

With this 20% reduction in the set-aside requirement, with the Third Proposed Rulemaking, there would be a 47% increase in the density attributable to up-FLUMing with this largely stick-built project (compared with MU-4 with the IZ bonus), and an 8% reduction in the set-aside requirement.

(b) Calculation of the IZ-Plus (NOSTRM) set-aside for the MU-7 building (majority of residential units are concrete and steel, §1003.4):

In this example, we consider a project with a map amendment from MU-4 to MU-7, which does not use the entire 240,000 SF allowed in MU-7, but instead proposes a building with 230,000 SF, of which 50,000 SF is non-residential. The majority of the residential units are concrete and steel.

The utilized bonus density is the difference between the project size (230,000 SF) and the amount allowed in an MU-7 zone before the IZ bonus density (for a land area of 50,000 SF and a maximum MOR FAR in an MU-7 zone, that is 200,000 SF). The utilized bonus density for this project is 30,000 SF. In §1003.4, the required set-aside is the greater of 70% of the utilized bonus density and the amount based on residential SF.

In this case, 70% of the 30,000 SF utilized bonus density is 21,000 SF.

There is an 84% increase in total FAR utilized as defined in Subtitle C §1003.5(b).<sup>12</sup> According to Table C §1003.4 (NOTPRM), the required set-aside based on residential floor area for projects with an increase over 75% and up to and including 100% is 14%. The calculation based on 14% of the residential floor area (180,000 SF) is 25,200 SF.

In this case, the calculation based on residential floor area exceeds the calculation based on bonus density and the set-aside requirement for this 230,000 SF concrete and steel MU-7 project is 25,200 SF.

There is a 53.3% increase in density from the map amendment made possible by the up-Fluming (compared with MU-4 with IZ, total FAR of 3.0), and there would be a 34.4% increase in the set-aside requirement with the Third Proposed Rulemaking.

With reduction in set-aside for larger units: If the residential portion of the building is configured with a sufficient number of units with three bedrooms or more to qualify for the 20% reduction in the requirement (§1003.9), the set-aside requirement for this project is reduced to 20,160 SF: only 160 SF more than the requirement for standard IZ for an MU-7 project that uses the entire bonus density available, and only 1,410 SF more than the required IZ set-aside for the MU-4 IZ project, which is 80,000 SF smaller than this MU-7 project.

With this 20% reduction in the requirement, with the Third Proposed Rulemaking, there would be a 53.3% increase in the density from the map amendment made possible by the up-Fluming and only a 7.5% increase in the set-aside requirement.

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<sup>12</sup> The MU-7 project is 230,000 SF, and the maximum square footage (before the 20% IZ bonus density in MU-4) is 125,000 SF. The percent increase (from 125,000 to 230,000) is 84%.

## Summary

The following table summarizes the IZ Plus (Notice of Third Proposed Rulemaking) set-aside requirements for several different types of projects based a map amendment from MU-4 to MU-7, with up-Fluming from low-density commercial to moderate-density commercial.

Project Description	MU-4 IZ Project Size	MU-4 IZ Set-Aside Requirement	MU-7 IZ Plus Project Size	MU-7 IZ Plus Set-Aside Requirement	Percent increase in density	Percent increase in set-aside requirement
MU-7 IZ Plus 220,000 SF, with 100,000 SF non-res More than half units are stick built	150,000 SF	18,750 SF (12.5% of project)	220,000 SF	21,600 SF (9.8% of project)	46.7%	15.2%
MU-7 IZ Plus 220,000 SF, with 100,000 SF non-res More than half units are stick built At least 50% of the IZ units have three bedrooms or more and at least 20% of all the units have three bedrooms or more (§1003.9)	150,000 SF	18,750 SF	220,000 SF	17,280 SF (7.85% of project)	46.7%	-7.84%
MU-7 IZ Plus 230,000 SF, with 50,000 SF non-res More than half units are concrete and steel	150,000 SF	18,750 SF	230,000 SF	25,200 SF (10.96% of project)	53.3%	34.4%
MU-7 IZ Plus 230,000 SF, with 50,000 SF non-res More than half units are concrete and steel At least 50% of the IZ units have three bedrooms or more and at least 20% of all the units have three bedrooms or more (§1003.9)	150,000 SF	18,750 SF	230,000 SF	20,160 SF (8.8% of project)	53.3%	7.5%

As seen from the table above, IZ-Plus (ZC 20-02: Notice of Third Proposed Rulemaking) does not assure that up-FLUMing and map amendments will produce a significant increase in the percent of housing subject to inclusionary zoning and will not produce a significant increase in affordable housing.

In each of these cases, the IZ-Plus inclusionary zoning units were a smaller percentage of square footage in the MU-7 projects than the percentage of the matter-of-right standard IZ MU-4 project without a map amendment.

And, in one of these cases, the IZ-Plus set-aside requirement for the much larger project with a map amendment would be less than the standard IZ requirement for a much smaller project without a map amendment.