

## MEMORANDUM

**TO:** District of Columbia Zoning Commission

**FROM:** Jonathan Kirschenbaum, AICP  
Development Review Specialist

Art Rodgers  
Senior Housing Planner  
JLS  
Jennifer Steingasser, AICP  
Deputy Director, Development Review & Historic Preservation

**DATE:** June 18, 2021

**SUBJECT:** ZC Case 21-05 – Public Hearing Report for a Proposed Text Amendment: IZ-XL Phase #2 – Applying Inclusionary Zoning to Conversions of Non-residential Buildings to Residential Use<sup>1</sup>.

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### **I. RECOMMENDATION**

The Office of Planning (“OP”) recommends that the Zoning Commission **approve** the proposed text amendments to revise the applicability requirements for Inclusionary Zoning (“IZ”) under Subtitle C § 1001, as provided in Appendix I of this report.

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

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

### **II. BACKGROUND**

At its March 11, 2021 public meeting, the Zoning Commission set down for a public hearing text amendment case 21-05. The proposed text amendments will apply the IZ program to existing buildings that are converted from non-residential use to residential use (“conversion”). The IZ requirement would apply to conversions regardless of whether the size of the building is retained or enlarged.

### **III. CHANGES SINCE SET DOWN**

Since the time of set down there have not been substantive changes to the text amendments proposed in OP’s set down report (Exhibit 2). However, the proposed text amendments have been revised to include the following minor changes:

- Reorganization of Subtitle C § 1001 to streamline the existing IZ program applicability requirements and to better integrate the new applicability requirements for conversions;
- Refinement of what establishes a conversion by referencing the residential use category of Subtitle B § 200.2;

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<sup>1</sup> Other than Downtown (“D”) zones that are exempt from the IZ program.

- Clarification that a conversion is subject to an IZ requirement when 10 or more new dwelling units are proposed by either:
  - Converting existing non-residential floor area to residential floor area; or
  - A combination of converting existing non-residential gross floor area to residential floor area and adding new residential floor area that did not previously exist; and
- Revision of Subtitle C § 1001.4 to clarify when existing residential floor area in a mixed-use building is subject to the IZ set-aside requirements when the non-residential portion of the building converts to residential use<sup>2</sup>.

#### IV. ANALYSIS

The original IZ analysis, when looking at holding land value constant, did not analyze change in uses, not only because there may not be bonus density, but also because the interplay of values between non-residential and residential is dynamic, complex, and quite specific to neighborhoods and even property. This proposal recognizes that there are instances where such conversions happen. The proposal seeks to balance keeping ahead of changing market dynamics of conversion of non-residential buildings to residential use while minimizing the disincentives for conversion.

Non-residential to residential use conversions represent an opportunity to create both market rate and affordable housing units and is analyzed in OP's recently released Assessment of Commercial to Residential Conversions in the District of Columbia ([Assessment of Commercial to Residential Conversions](#)) (Exhibit 8). The report's findings show that while opportunities for conversions are limited there is potential in the Rock Creek West Planning Area (whose boundaries are roughly similar to those of the Uptown Office Submarket) and to a lesser extent in the Near Northwest and Upper Northeast Planning Areas, where office and hotel demand show indications of decline.

The Assessment found that buildings most likely to support conversion have specific characteristics, such as:

- high vacancy,
- lack of renovation for many years,
- pre-existing design that could support conversion, and/or
- outdated floor configurations (such as office suites featuring large document production and storage areas).

An example of these characteristics is the Dupont Circle Office Submarket within the Near Northwest Planning Area, which has a large number of office buildings constructed between 1970 and 1990 that were designed with a paper record-driven workplace in mind. Some buildings in this area have vacancy rates and capitalization cycles that may support conversion.

The Assessment also found that in established office markets, long-term property value is significantly higher for office buildings than residential buildings, which will likely dissuade property owners from converting their office buildings to residential use. While there may be limited areas and pre-existing conditions to support conversions on a large scale, these proposed text amendments will

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<sup>2</sup> The proposed revisions are proposed to align with the existing IZ requirements that govern when an existing building becomes subject to the IZ set-aside requirements.

support and enable the creation of additional IZ units, particularly in areas that do not have a large supply of affordable housing but do have the characteristics for supporting a conversion.

## V. SUMMARY OF PROPOSED TEXT AMENDMENTS

The proposed text amendments will apply IZ to conversions regardless of whether the existing building envelope is retained or enlarged. The conversion must be located in a zone where IZ already applies and proposes ten or more dwelling units at the time of the building permit. The ten or more dwelling unit threshold can be a combination of existing floor area converted to residential use and new floor area built for residential use. All other requirements of the IZ program would apply to a conversion, including the existing set-aside requirements and the use of bonus density.

Generally, pre-existing residential floor area is only subject to the IZ requirements when a building is enlarged to utilize IZ bonus density or is increased in size by 50 percent or more under the existing IZ regulations pursuant to Subtitle C § 1001.4. These proposed text amendments propose to retain this long establish rule for existing residential floor area in a mixed-use building.

The following table demonstrates different examples of when the IZ set-side requirements apply in the context of a conversion to residential use of 10 or more units:

<b>Type of Building:</b>	<b>Example:</b>	<b>Building Envelop is:</b>	<b>IZ Applies to:</b>
Non-residential (i.e. office or hotel)	<b>All</b> of the floor area is <b>converted</b> to residential use.	Retained	Building’s entire floor area.
Non-residential (i.e. office or hotel)	<b>Part</b> of the floor area is <b>converted</b> to residential use.	Retained	Only floor area converted to residential use.
Non-residential (i.e. office or hotel)	<b>All</b> of existing building floor area is <b>converted</b> to residential use and <b>new stories added</b> devoted to residential use.	Retained and enlarged	Building’s entire floor area.
Mixed-use (i.e. half office and half residential)	<b>All</b> office floor area <b>converted</b> to residential use.	Retained	Only floor area converted to residential use. Existing residential floor area continues to be exempt.
Mixed-use (i.e. half office and half residential)	<b>All</b> office floor area <b>converted</b> to residential use and <b>building enlarged</b> by using <b>IZ bonus density</b> .	Retained and enlarged	Building’s entire floor area.

## **VI. PLANNING CONTEXT**

### **COMPREHENSIVE PLAN**

As fully discussed in the OP set down report (Exhibit 2), the proposed text amendments would further Comprehensive Plan policy objectives, particularly with respect to policies within the Housing Citywide Elements. The most significant of the Housing Element policies are:

#### Policy H-1.2.1: Affordable Housing Production as a Civic Priority

Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city. 504.6

#### Policy H-1.2.2: Production Targets

Consistent with the Comprehensive Housing Strategy, work toward a goal that one-third of the new housing built in the city over the next 20 years should be affordable to persons earning 80 percent or less of the area wide median income (AMI). Newly produced affordable units should be targeted towards low-income households in proportions roughly equivalent to the proportions shown in Figure 5.2. 504.7

#### Policy H-1.2.3: Mixed Income Housing

Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing. 504.8

On balance, the proposed text amendments would not be inconsistent with the existing Comprehensive Plan and would further the affordable housing priorities in the District. The varying policies cited in this report work together to support new ways to distribute additional mixed income housing more equitably across the entire District. There are non-residential buildings with the potential to be converted that are located in high-cost areas where affordable housing is limited, and the applicability of IZ to conversions will help increase the supply of affordable housing in these areas.

## **VII. OTHER DISTRICT AGENCIES**

A letter from DOEE was filed to the record at Exhibit 7 stating the agency does not have any comments on the proposed text amendments.

## **VIII. COMMUNITY COMMENTS**

Since the January 28, 2021 set down, no comments have been submitted to the case file.

## 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 C, GENERAL RULES

Subsections 1001.2, 1001.3, 1001.4, and 1001.6 of § 1001, APPLICABILITY, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, are 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 criteria:~~
- (1) **Proposes to create ten (10) or more new dwelling units, including dwelling units located in a cellar or penthouse, by:**
- (i) **Adding Is proposing** new gross floor area beyond that existing at the time of the building permit application ~~that would result in ten (10) or more new dwelling units, including dwelling units located in a cellar or penthouse;~~
- (2) ~~Will have ten (10) or more new dwelling units constructed concurrently or in phases, on a lot, on contiguous lots, or on lots divided by an alley, if such lots were under common ownership, control, or affiliation within one (1) year prior to the application for the first building permit;~~
- (ii) **Changing the use of existing gross floor area to the “Residential” use category of Subtitle B § 200.2; or**
- (iii) **A combination of (i) and (ii);**
- (~~3~~) **(2)** Consists of a residential building that has penthouse habitable space pursuant to Subtitle C § 1500.11; or
- (~~4~~) **(3)** 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 subparagraphs (1) through (~~3~~) **(2)** of this paragraph 1001.2(a); or

(b) A “Voluntary Inclusionary Development” – any single household ...<sup>3</sup>

1001.3 ~~If more than one (1) building permit is issued for a development, the~~ The number of dwelling units and ~~new the~~ gross floor area used pursuant to Subtitle C § 1001.2(a) to establish the applicability of the IZ requirements, and associated IZ modifications, shall be based on:

(a) The new dwelling units and the gross floor area constructed or converted to the “Residential” use category of Subtitle B § 200.2 concurrently or in phases, on a single lot, on contiguous lots, or on lots divided by an alley, that were under common ownership, control, or affiliation within one (1) year prior to the application for the first building permit; and

(b) All all the building permits issued for the development within a three (3)-year period, starting from the issuance of the first building permit for the development.

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 through 1003.4 and the available modifications to applicable development standards shall apply as follows:

(a) For any development described by Subtitle C §§ 1001.2(a), to ~~To~~ both the existing and new gross floor area if the development:

- (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) For developments described by Subtitle C §§ 1001.2(a)(1)(i) or (a)(3), to ~~To~~ only the new gross floor area if it the development:

- (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;

(c) For developments described by Subtitle C § 1001.2(a)(1)(ii), to only the existing gross floor area for which the use is changed to the “Residential” use category of Subtitle B § 200.2 if the development:

- (1) Does not utilize the bonus density provided by Subtitle C § 1002; and

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<sup>3</sup> The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the provisions does not signify an intent to repeal.

**(2) Does not result in an increase of fifty percent (50%) or more in the building’s existing gross floor area; and**

**(d) For developments described by Subtitle C §§ 1001.2(a)(1)(iii), to the portion of the existing gross floor area for which the use is changed to the “Residential” use category of Subtitle B § 200.2 as well as to the new gross floor area if the development:**

**(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.**

...

1001.6 The requirements of this chapter shall not apply to:

(a) Any development subject to a mandatory affordable housing requirement that exceeds the requirements of this chapter as a result of District of law of financial subsidies ... ; provided:

(1) The development shall set aside, for so long as the project exists, affordable dwelling units (**Temporarily Exempt Affordable Inclusionary** Units) in accordance with the minimum income standards of Subtitle C § 1001.6(a)(2) and equal to at least the gross square footage that would have been otherwise required pursuant to the set-aside requirements in Subtitle C § 1003 for the zone in which the development is located **and these Temporarily Exempt Inclusionary Units shall be identified on plans submitted for building permit;**

(2) The **Temporarily Exempt Affordable Inclusionary** Units shall be reserved ...

(3) The **Temporarily Exempt Affordable Inclusionary** Units shall be sold or rented in accordance with the Inclusionary Zoning Program (as defined by the IZ Act) upon the expiration of the affordable housing requirements of the District law or financial subsidies administered by DHCD, DCHFA, or DCHA;

(4) The requirements set forth in subparagraphs (1), (2), and (3) of this paragraph, shall be stated as declarations, **accompanied by plans identifying the Temporarily Exempt Affordable Inclusionary Units,** within a covenant running with the land for the benefit of the District of Columbia ...

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