

## MEMORANDUM

**TO:** District of Columbia Zoning Commission

**FROM:** <sup>JLS</sup>  
Jennifer Steingasser, Deputy Director  
Development Review & Historic Preservation

Jonathan Kirschenbaum, Development Review Specialist

**DATE:** January 3, 2020

**SUBJECT:** ZC Case 20-XX – Set Down Report for Proposed Concept to Expand the Existing Inclusionary Zoning Requirements Specific to Certain Zoning Map Amendments.

---

### **I. RECOMMENDATION**

The Office of Planning (“OP”) recommends that the Zoning Commission (“Commission”) **set down** the following concept proposal, which would expand existing Inclusionary Zoning (“Regular IZ”) requirements to create new Expanded Inclusionary Zoning (“Expanded IZ”) requirements applicable to certain types of zoning map amendments.

As detailed in this report, OP does not yet recommend specific text. Instead, OP would like to engage with the Commission and the public to refine the concept proposal through a public hearing process, similar to the approach taken to the initial IZ case. OP would then work with the Office of Attorney General (“OAG”) and the Department of Housing and Community Development (“DHCD”) to bring forward proposed zoning text amendments to the Commission to implement the finalized concept and work with the Office of Zoning on how to map and document where the Expanded IZ requirements apply. Once the proposed text is drafted, it will also require a public hearing.

### **II. BACKGROUND**

The District’s existing housing stock and projected housing production are currently not enough to meet current or future housing needs, especially for creating new affordable housing. The need for additional affordable housing and the importance of distributing affordable housing throughout the city have been reinforced through the Mayor’s Order on Housing, the Housing Equity Report, and pending revisions to the Comprehensive Plan.

The Mayor’s Order on Housing ([Mayor's Order on Housing](#)) lays the ground work for an aggressive approach to the production of new and affordable housing to meet growing housing needs and to curb displacement in the District:

*Increased housing production and preservation is required to address growth and ensure the District lives up to its values of being diverse and inclusive. To do this, the District must create 36,000 new residential units by 2025. Meeting the city's affordable housing needs will require that at least 12,000 of new residential units are affordable to low income households and that the District preserve an additional 6,000 affordable housing units. The larger region must produce housing for an additional 240,000 households by 2025.*

The Housing Equity Report identifies areas of the District that have a shortage of dedicated affordable housing and sets production goals by area for additional affordable housing units. Lastly, the Comprehensive Plan provides the policies for developing and implementing planning tools to increase affordable housing creation.

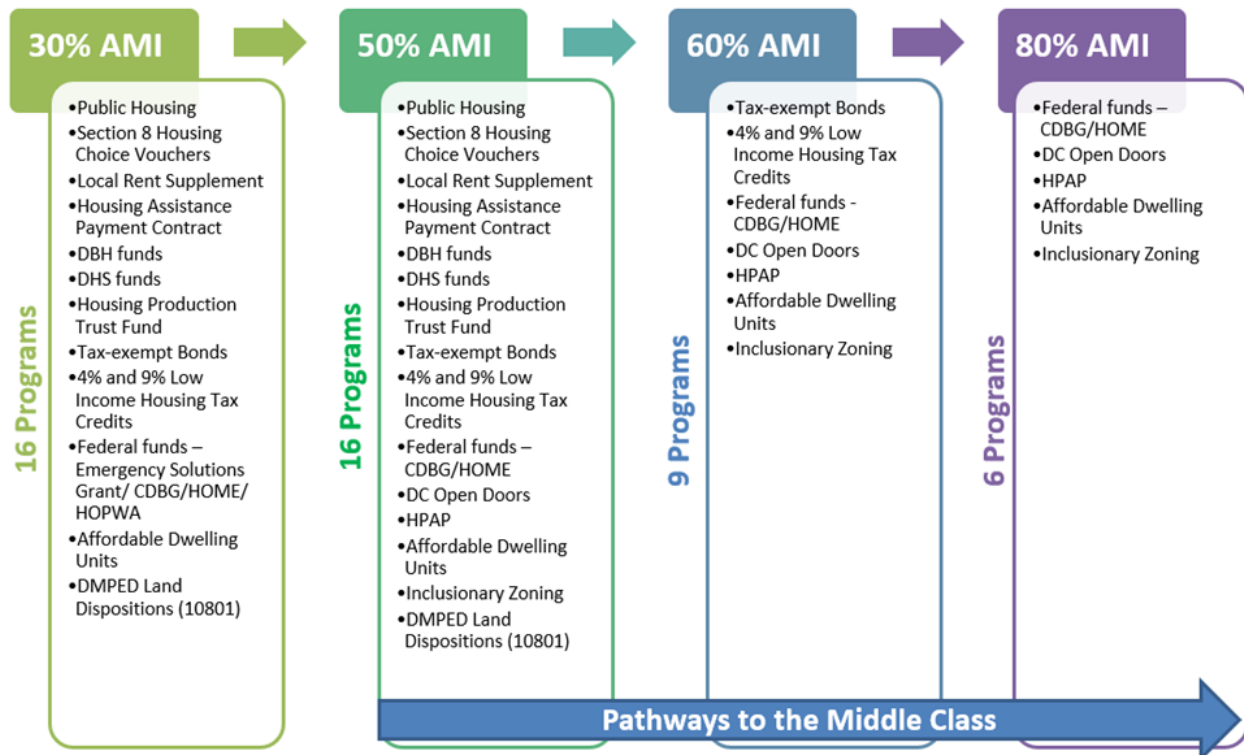
Expanding the IZ set-aside for certain types of map amendments would be one tool among many used to fulfill the District’s goal of ensuring housing equity throughout the entire city by the production of additional affordable housing. As described in Section IV of this report, in concept an Expanded IZ set-aside would apply when a property owner requests a map amendment to rezone a lot to a higher density than what is currently permitted by the current zoning classification.

**What is Dedicated Affordable Housing?**

Affordable housing is income- and rent-restricted housing for households ranging from extremely low-income earning less than 30% of the Median Family Income (“MFI”) up to households earning less than 80% of the MFI. Each year, DHCD releases rent and income limits for affordable housing based on data from the U.S. Department of Housing and Urban Development. In 2019, the District’s MFI limit at 80% or below was \$97,050 for a family of four and \$67,950 for a single-person household. Rent control units do not meet this two-prong test because they can be inhabited by households of any income.

The chart below summarizes the different types of affordable housing and funding sources in the District.

Figure 1. Sample of Affordable Housing Programs by Target Area Median Income (AMI).



Source: Department of Housing and Community Development.

**Mayor’s Order on Housing**

In May 2019, Mayor Bowser issued an Order on Housing directing DC Government agencies to develop policies, tools, and initiatives that would lead to the creation of 36,000 housing units of which 12,000 would be affordable by 2025. The Order requires District agencies to undertake a review of how existing affordable housing is either concentrated in the District, threatened to be removed, or is extremely limited in availability as a result of historic exclusionary and discriminatory land use decisions. OP and DHCD are working together to develop a housing framework to examine how existing policies can be amended and how new policies can be created to increase affordable housing availability through a fair and equal distribution throughout the District.

**Housing Equity Report**

OP and DHCD initiated work on the housing framework by releasing the Housing Equity Report ([HousingEquityReport.pdf](#)) in October 2019 to assess where dedicated affordable housing currently exists and where additional affordable housing is needed throughout the District. Using the 10 planning areas identified in the Comprehensive Plan, the report outlined affordable housing production goals by area to achieve the creation of 12,000 affordable housing units by 2025. The findings of the report showed that some planning areas are on track with their affordable housing production goals, but most planning areas would require focused resources to reach the proposed goals. Based on the current affordable housing pipeline, the District would be 5,220 affordable housing units short of meeting its goal of 12,000.

Figure 2. Current Affordable Housing Pipeline & 2025 Production Goals by Planning Area.<sup>1</sup>

<b>Figure 6. Current Affordable Housing Pipeline &amp; 2025 Production Goals by Planning Area</b>				
Planning Area	Affordable Housing Production Goals	Affordable Housing Pipeline	Shortage of Affordable Housing	2025 Total Housing Production Goals*
Rock Creek West	1,990	80	1,910	1,260
Capitol Hill	1,400	280	1,120	3,270
Near Northwest	1,250	270	980	1,850
Mid-City	1,010	620	390	4,210
Rock Creek East	1,500	1,160	340	1,580
Central Washington	1,040	750	290	3,940
Upper Northeast	1,350	1,160	190	6,900
Lower Anacostia Waterfront & Near Southwest	850	910	on track	7,960
Far Southeast & Southwest	1,120	1,450	on track	2,040
Far Northeast & Southeast	490	1,290	on track	2,990
<b>Total</b>	<b>12,000</b>	<b>7,970</b>	<b>5,220</b>	<b>36,000</b>

\*The total housing goals consist of net new market rate and affordable housing production. For Rock Creek West, the new affordable housing goals are greater than the total housing goals because the affordable housing goals include not only net new production, but also conversion of existing housing into subsidized housing and voucher recipients living in non-restricted housing. Reaching our goals will require a mix of these strategies, especially in Rock Creek West, where new housing has been extremely limited to date and where land use changes must be made to the Comprehensive Plan to reach these housing goals.

Source: OP and DHCD

<sup>1</sup> Housing Equity Report Figure 6 (p.12).

## **Comprehensive Plan**

As part of the Comprehensive Plan amendment process, OP has proposed revisions to the housing element that would encourage increased market-rate and affordable housing creation in “high cost” areas of the District where existing affordable housing is limited and where land prices make it very expensive to financially subsidize affordable housing. OP has also released a draft Future Land Use Map (“FLUM”) that would change the intensity of land use designations in areas, such as around metro stations, along major corridors, and on large properties. Among the reasons for the proposed changes to the FLUM designations is to identify areas where affordable housing can be accommodated in areas that can support more density.

While many of these areas may be developed through a Planned Unit Development, it is anticipated that requests for zoning map amendments may also increase at properties where the draft FLUM increases the land use designation to a higher category. These map amendments would likely result in properties being “up-zoned” to higher density than currently permitted. An Expanded IZ set-aside scale would establish more affordable housing when a zoning map amendment results in greater residential density permitted on a site than allowed under the current zoning district. The intent is to produce a significant amount of affordable housing when residential density is increased through a map amendment. Given that IZ has been the primary tool to create the few dedicated affordable units in high opportunity areas of the District, Expanded IZ set-asides would be a valuable tool for additional housing options that align with the Planning Area targets.

The proposed amendments strengthen the existing Comprehensive Plan and inform this set down process. The current Comprehensive Plan includes language in supporting map amendments and affordable housing. Two central policies are:

### **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

### **Policy H-1.2.7: Density Bonuses for Affordable Housing**

Provide zoning incentives to developers proposing to build low- and moderate-income housing. Affordable housing shall be considered a public benefit for the purposes of granting density bonuses when new development is proposed. Density bonuses should be granted in historic districts only when the effect of such increased density does not significantly undermine the character of the neighborhood. 504.14

Attachment I includes other existing Comp Plan text supporting the concept of Expanded IZ.

Proposed amendments to the Comprehensive Plan further inform the longer-term intent of creating Expanded IZ requirements:

### **Action H-1.2.I: Leveraging Inclusionary Zoning**

Examine and propose greater Inclusionary Zoning requirements when zoning actions permit greater density or change in use. Factors supporting a greater requirement may include high cost areas, proximity to transit stations or high capacity surface transit corridors, and when increases in density or use changes from Production Distribution and Repair to Residential or Mixed-Use. Consider requirements that potentially leverage financial subsidies such as Tax-Exempt Bonds.

### III. REGULAR INCLUSIONARY ZONING

Below is a brief overview of the Regular IZ regulations in Subtitle C, Chapter 10 of the 2016 Zoning Regulations:

- The Regular IZ program requires affordable housing be set aside for households earning no more than 60% of the MFI for rental housing and 80% of the MFI for ownership housing.
- The program is applicable in most areas of the District and supports the creation of affordable housing for moderate income residents.
- A property is subject to the Regular IZ program when a new development is proposed with 10 or more housing units. The Regular IZ program requires a set aside typically either 8% and 10%<sup>2</sup> of the residential gross floor area (“GFA”) of the building:

Figure 3. Regular IZ Set Aside Requirement.

Regular IZ Set Aside Requirement	
<u>Structures not employing Type I construction &amp; located in zone w/ height limit of 50 ft or less</u>	<u>Concrete and steel structures (Type I construction) or zones w/ height limit greater than 50 ft</u>
Greater of: <ul style="list-style-type: none"> <li>• 10% of the residential GFA including penthouse habitable space; or</li> <li>• 75% of its utilized bonus density plus an area equal to 10% of penthouse habitable space</li> </ul>	Greater of: <ul style="list-style-type: none"> <li>• 8% of residential GFA including penthouse habitable space; or</li> <li>• 50% of its utilized bonus density plus an area equal to 8% of penthouse habitable space</li> </ul>

- Properties subject to Regular IZ requirements are permitted to use bonus density to increase their maximum permitted FAR by 20% in zones with an FAR maximum.
- Currently, in zones with an FAR maximum, each zone has the following FARs:
  - A matter-of-right (MoR) FAR if Regular IZ is not applicable;
  - A Regular IZ FAR with bonus density of 20% more than MoR; and
  - A PUD FAR of 20% more than the Regular IZ FAR.

Figure 4A – Residential Zone FARs.

Zone Density	RA-1 Low-Mod	RA-2 Moderate	RA-3 Medium	RA-4 Med-High	RA-5 High Density
<b>MoR FAR</b>	0.9	1.8	3.0	3.5	6.0
<b>IZ FAR</b>	1.08	2.16	3.6	4.2	7.2
<b>PUD FAR</b>	1.30	2.59	4.32	5.04	8.64

<sup>2</sup> Note: Regular IZ’s maximum requirement can reach 12.5% of GFA when projects below 50 feet in height achieve the full 20% bonus density.

Figure 4B – Multi-Use Zone FARs.

Zone Density	MU-3 Low	MU-4 Moderate	MU-5A Medium	MU-7 Medium	MU-8 Medium	MU-6 Med-High	MU-10 Med-High	MU-9 High
MoR FAR	1.0	2.5	3.50	4.0	5.0	6.0	6.0	6.5
IZ FAR	1.2	3.0	4.20	4.8	6.0	7.2	7.2	7.8
PUD FAR	1.44	3.6	5.04	5.76	7.2	8.64	8.64	9.36

#### IV. PROPOSED CONCEPTS FOR EXPANDED IZ

OP requests the Zoning Commission set down for a public hearing the following Expanded IZ set-asides with several additional options for consideration.

##### Applicability

- An Expanded IZ set-aside would apply to map amendments that result in higher density residential development or map amendments from a zone that does not permit residential use to one that does; it would not apply to purely non-residential density.
- Proposed zoning map amendments must not be inconsistent with the property’s land use designation on the FLUM.
  - For example, a property that has a low-density residential land use designation on the FLUM would not be allowed to be rezoned to a high-density residential zone.
- When an Expanded IZ set-aside is applicable, a map amendment would be recorded on the official Zoning Map to indicate that the zone is subject to Expanded IZ requirements. OP will work with the Office of Zoning on how to illustrate the Expanded IZ.
- All other regulations of the Regular inclusionary zoning program would apply to developments subject to the Expanded IZ, except as described below.
- A property that elects to be developed as a PUD is not anticipated to be subject to Expanded IZ set-aside; affordable housing in excess of the current IZ set-aside would be negotiated as part of the benefits of the PUD. This provision recognizes that PUDs provide a host of other benefits, including for example day care space, transit improvements, and other community benefits.

##### Set-Aside Calculation

- The Expanded IZ set-aside requirement would supersede the Regular IZ set-aside requirement (see section III) for properties with an Expanded IZ designation on the zoning map.
- The Expanded IZ set-aside requirement would be an absolute percentage that would apply to the total residential gross floor area. The set aside would not be the “greater of” a percent of achievable bonus density requirement.

- OP proposes to use a sliding scale (Figure 5) for determining the Expanded IZ set-aside requirement so that the set-aside requirement is commensurate with the degree of density increased through the rezoning.
- The Expanded IZ set-aside percentage would be based on the increase of residential FAR resulting from moving from the existing zone to the new zone. The increase in FAR would be measured by what the maximum matter-of-right FAR is in the existing zone compared to what the maximum IZ FAR (incorporating the 20% Regular IZ density bonus) is in the new zone. The percent set asides would be applied to the total FAR of the rezoned property(ies):

Figure 5. Proposed Expanded IZ Set Aside Requirements.

Increase in FAR	0.5	0.51 -1.00	1.01-1.50	1.51- 2.00	2.01 - 2.50	Above 2.50	PDR change
Set Aside Expanded IZ – Starting @ 10%	12%	14%	16%	18%	20%	20%	20%
Set Aside Expanded IZ – Starting @ 8%	10%	12%	14%	16%	18%	20%	20%

- OP recommends that a property rezoned from a PDR zone to a zone that permits residential use should be subject to Expanded IZ. OP proposes that such type of rezoning be subject to a 20% set aside requirement because the increase in permitted residential FAR over what is allowed would be significant. This is because the PDR zones do not permit residential uses and thus do not prescribe a residential FAR.
- Sample Calculations
  - Example 1:

In the table below, a property rezoned from the RA-2 zone to the RA-3 zone would have a 1.8 FAR increase and the resulting set aside requirement for Expanded IZ would be 18% of the total residential gfa. The maximum permitted residential FAR after the rezoning would be 3.6 with IZ.

Map Amendment	Zone	Residential FAR	Increase in Residential FAR	Expanded IZ Set Aside
<b>From:</b>	RA-2	1.8 (Max. MoR FAR)	1.8	16%
<b>To:</b>	RA-3	3.6 (Max. IZ FAR)		

- Example 2:

In the example below, a property rezoned from the PDR-4 zone to the MU-4 zone would have an increase in residential FAR that would be the full FAR of the new zone. The resulting set aside requirement for Expanded IZ would be 20% because this rezoning would be a change to a non-PDR zone. The maximum permitted residential FAR after the rezoning would be 3.0 with IZ.

Map Amendment	Zone	Residential FAR	Increase in Residential FAR	Expanded IZ Set Aside
<b>From:</b>	PDR-4	Residential Use Not Permitted	3.0	20%
<b>To:</b>	MU-4	3.0 (Max. IZ FAR)		

○ Example 3:

In the example below, a property rezoned from the MU-5A zone to the MU-8 zone would have a 2.5 FAR increase and the resulting set-aside requirement for Expanded IZ would be 20% of the total residential gfa. The maximum permitted residential FAR after the rezoning would be 6.0 with IZ.

Map Amendment	Zone	Residential FAR	Increase in Residential FAR	Expanded IZ Set Aside
<b>From:</b>	MU-5A	3.5 (Max. MoR FAR)	2.5	20%
<b>To:</b>	MU-8	6.0 (Max. IZ FAR)		

**Bonus Density**

- A development that is subject to the Expanded IZ would be permitted to use bonus density prescribed by the Regular IZ regulations (i.e. bonus FAR, lot occupancy, and height).
- While developments subject to an Expanded IZ would have a larger set-aside requirement, they would also gain a substantially higher maximum permitted FAR as a result of the rezoning and would be able to use the Regular IZ bonus density available to the new zone. Given this inherent increased density, OP does not recommend that additional bonuses be provided over what would already be gained through a rezoning.

**Additional Considerations**

OP would like to continue assessing other considerations for expanding IZ that may be alternatives to or inform the concept proposal described above.

**Family-Sized Units and Special Housing**

If a property owner chooses to devote the majority or all their affordable housing set aside requirement to either family-sized units or other types of households with special needs, they would be subject to a different set aside requirement than what is described above for Expanded IZ.

**Deeper Affordability**

If a property owner chooses to devote the majority or all their affordable housing set aside requirement to households whose income is between 30% and 50% MFI, they would be subject to a different set aside requirement than what is described above for Expanded IZ.



### Preservation of PDR Uses

Balancing the preservation of PDR space in areas also identified for residential uses could be subject to a different set aside requirement than what is described above for Expanded IZ.

OP will continue to work on forecasting the potential effects of an Expanded IZ program in terms of new unit production and financial impacts prior to the public hearing.

JS/jk

## **ATTACHMENT I – Comprehensive Plan Housing Element**

### **501 Housing Goal**

501.1 The overarching goal for housing is: Develop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia.501.1

502.3 As noted in the Land Use and Framework Elements, the city already has the land resources to meet this demand. But land alone is not enough to ensure the production of housing. And housing production alone does not guarantee that a portion of the new units will be affordable.

502.4 A multi-pronged strategy is needed to facilitate production, address regulatory and administrative constraints, and ensure that a substantial number of the new units added are affordable to District residents. Many of the basic tenets of this strategy were established by the 2006 Comprehensive Housing Strategy and are reiterated in the text box on the following page. 502.4

#### **503.4 Policy H-1.1.3: Balanced Growth**

Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing. 503.4

#### **503.5 Policy H-1.1.4: Mixed Use Development**

Promote mixed use development including housing on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations. 503.5

### **504 H-1.2 Ensuring Housing Affordability**

504.1 The District of Columbia faces numerous affordable housing challenges. It has both a disproportionate share of the region’s poorest residents and the region’s most rapid decline in the availability of housing to serve these residents. In 2005, the median income for a family of four for the region was \$89,300, but it was just \$55,750 in the District. In fact, about three-quarters of the city’s households earn below the regional median income, while at the same time housing prices in the city are increasing at a faster rate than almost any jurisdiction in the metropolitan area. The share of District renters who paid more than 30 percent of their incomes for housing jumped from 39 percent in 2000 to 46 percent in 2004. The share paying more than 50 percent of their incomes climbed from 18 percent to 23 percent.

504.5 The District also has been pursuing legislative and regulatory measures that require affordable housing in new development. For many years, the city has had a policy requiring developers seeking commercial density bonuses to provide affordable housing or pay into the Housing Production Trust Fund. In addition, a pending inclusionary

zoning ordinance would require affordable units within future market-rate residential development of 10 units or greater. The foundation for these actions was created by the previous Comprehensive Plan and is carried forward in this Element. 504.5

504.6 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

504.7 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

504.8 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

504.12 Policy H-1.2.5: Workforce Housing

In addition to programs targeting persons of very low and extremely low incomes, develop and implement programs that meet the housing needs of teachers, fire fighters, police officers, nurses, city workers, and others in the public service professions with wages insufficient to afford market-rate housing in the city. 504.12

504.14 Policy H-1.2.7: Density Bonuses for Affordable Housing

Provide zoning incentives to developers proposing to build low- and moderate-income housing. Affordable housing shall be considered a public benefit for the purposes of granting density bonuses when new development is proposed. Density bonuses should be granted in historic districts only when the effect of such increased density does not significantly undermine the character of the neighborhood. 504.14

504.18 Action H-1.2.A: Inclusionary Zoning

Adopt an Inclusionary Zoning requirement which would require the inclusion of affordable units for low income households in new residential developments of 10 units or greater, with accompanying provisions for density bonuses and long-term affordability. Apply this requirement as fairly and uniformly as possible, providing flexibility as necessary for sites where density bonuses cannot feasibly be provided.