

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: ^{JLS} Jennifer Steingasser, Deputy Director Development Review and Historic Preservation

DATE: November 3, 2017

SUBJECT: ZC 04-33I Inclusionary Zoning ZR16 Corrections and Reorganization

I. SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends the Zoning Commission set down for public hearing several proposed amendments to Sub-Title C Chapter 10, Inclusionary Zoning (IZ), and multiple zone sub-titles for consistency. The proposed amendments correct errors and omissions, make technical changes, reorganize certain sections, and provide clarifications to language. These proposed amendments are the result of working with the Department of Consumer and Regulatory Affairs' (DCRA) Zoning Administrator to address administrative issues that have arisen from the implementation of the ZR16 regulations.

This report also provides recommended language on how IZ gross square footage requirements of the zoning regulations are operationalized into deliverable net square footage of actual IZ units.

Further, the Zoning Administrator has asked OP to raise the impact of IZ unit proportionality when it is applied to small projects. The unit proportionality rule is difficult to fully apply when a project does not include two-bedroom or larger units, and can result in a small project needing to set aside significantly more square footage than required.

OP requests the flexibility to work with the Office of Attorney General on the text for the public hearing notice.

II. SUMMARY OF RECOMMENDATIONS

OP recommends the following sections of Title 11 DCMR be amended. The proposed amendments are presented individually in numerical order below, and within the context of the entire IZ chapter attached as an Appendix to this report for context. New text is formatted with **bold underline** and deletions are formatted with ~~strikethrough~~.

Subtitle C- GENERAL RULES: Chapter 10 Inclusionary zoning

Amendment #1) The proposed amendment to § 1001.1 clarifies that the bonus density is the amount actually utilized by the project and not the theoretical 20 percent permitted by § 1002.3. This clarifies the amount of bonus density that is used to calculate the IZ requirements of §§ 1003.1 and 1003.2.

Amendment #2) The proposed amendments to § 1001.2 replaces the list of individual zone names in (a) with a general reference to the zone chapters within individual subtitles and clarifies that the ten-unit trigger can apply to multiple contiguous lots if they are under common ownership one year prior to the first building permit in (c).

1001 APPLICABILITY

1001.1 Achievable bonus density is the amount of the permitted bonus density that ~~potentially may be~~ **is** utilized within a particular inclusionary development provided in Subtitle C § 1002.

1001.2 Except as provided in Subtitle C § 1001.5, the requirements and modifications of this chapter shall apply to developments meeting the following criteria:

- (a) Are mapped in ~~the R-2, R-3, R-10, R-13, R-17, R-20, RA-1 through RA-4, RA-6, RA-7, RA-8, or RA-9 zone; any RF, ARTS, CG, RC, USN, STE, SEFC, or HE zone; the NC-1 through NC-5 or NC-7 through NC-13 zone; the MU-1 through MU-10 or MU-12 through MU-26, MU-28, MU-29 or MU-30 zone; or the D-2 or D-4 zone.~~ **zones in which IZ is identified as applicable.**
- (b) ...
- (c) Will have ten (10) or more new dwelling units constructed concurrently or in phases, on **one or more** contiguous lots or 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;

To implement this clarification, new language will be added to Subtitles, D, E,F, G, H, and K to state:

Unless otherwise indicated, the requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall apply to all zones in this Subtitle.

Amendment #3) Amend § 1001.3 to maintain consistency with § 1001.2 (c) and ensure that the IZ requirements apply to one or more contiguous lots if the permit for the tenth unit was applied for within three years of the first building permit application.

1001 APPLICABILITY

...
1001.3 If more than one (1) building permit is issued for a development **on the one or more lots defined in Subtitle C § 1001.2(c)**, the number of dwelling units and new gross floor area used to establish the applicability of the IZ requirements, and associated IZ modifications, shall be based on all the applications occurring within a three (3) year period, starting from the first building permit application.

Amendment #4) The proposed amendment to § 1001.4 clarifies that IZ applies to an existing building if an addition to that building uses bonus density and clarifies that IZ requirements do not apply to the existing building if the total floor area of a 10-unit expansion is less than 50 percent of the floor area of the existing building and bonus density is not utilized.

1001 APPLICABILITY

...

1001.4 If the new gross floor area **utilizes bonus density provided by Subtitle C § 1002 or comprising comprises** ten (10) or more units **that** would result in an increase of fifty percent (50%) or more in the floor area of an existing building, IZ requirements and modifications shall apply to both the existing and the increased gross floor area. **If the new gross floor area comprising ten (10) or more units would result in an increase of less than fifty percent (50%) in the floor area of an existing building and does not use the bonus density provided by § 1002 then IZ requirements and modifications shall only apply to the new gross floor area.**

Amendment #5) The proposed amendments to § 1001.5 reflects the proposed amendments to § 1001.2. The applicability of IZ is proposed to be included in each subtitle. In those zones where IZ is not applicable, a statement to that effect is specifically proposed (a full list of the zones where IZ is *not* applicable is included as Attachment A)

The amendment also proposes the relocation of university and embassy housing from § 1001.5 to § 1001.6 which exempts them from both base IZ requirements and those triggered by penthouses. It maintains penthouse requirements applicable to hotel uses.

1001 APPLICABILITY

...

1001.5 Except for new penthouse habitable space as described in Subtitle C § 1001.2(d), IZ requirements of this chapter shall not apply to **hotels, motels, or inns.**:

~~(a) Properties located in any of the following areas~~

~~(1) The R-1-A and R-1-B zones;~~

~~(2) The MU-13 zone in the Georgetown Historic District;~~

~~(3) The R-3 zone in the Anacostia Historic District;~~

~~(4) The MU-27 zone;~~

~~(5) The D-1-R, D-3, D-4-R, and D-5 zones;~~

~~(6) The SEFC zones of Subtitle K Chapter 2 that are subject to a land disposition or other agreement with the District of Columbia that mandates the provision of affordable housing;~~

~~————(7)—— The WR zones of Subtitle K, Chapter 9; and~~

~~————(8)—— The NC 6 zone.~~

- ~~(b) Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;~~
- ~~(c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff; and~~
- ~~(d) Hotels, motels, or inns.~~

Amendment #6) The proposed amendments to § 1001.6 reinserts (a)(5) which was part of the original 1958 regulations and adds the university and embassy housing to the section from § 1001.5.

1001.6 IZ 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 law or financial subsidies funded in whole or in part by the Federal or District Government and administered and/or monitored by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency (DCHFA), or the District of Columbia Housing Authority (DCHA); provided:

(1) ~~...~~

(5) The Exempt Affordable Units shall be sold or rented in accordance with the pricing structure and management rules established by the federal or District funding source, or financing or subsidizing entity.

(c) Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff.

(d) Housing that is owned or leased by foreign missions exclusively for diplomatic staff.

Amendment #7) Proposed amendment to § 1002.2 and § 1002.4 is a reorganization that deletes the table of IZ Dimensional Modifications for Lower Density Residential zones from the IZ chapter and directs reader to the tables found in the respective subtitles.

1002.2 Inclusionary developments in the **R and RF** zones ~~identified in the following table~~ may use the minimum lot dimensions identified in ~~the table in lieu of the otherwise required lot dimension required by Subtitles D and E.~~

TABLE C § 1002.2: IZ DIMENSIONAL MODIFICATIONS FOR LOWER DENSITY ZONES

Base Zone	IZ Dimensional Modifications for Lower Density Zones		
	Minimum Lot Area	Minimum Lot Width	Minimum Lot Width with Special Exception
R-2, R-10 Detached	3,200 sq. ft.	40	32
R-2, R-10 Semi-Detached	2,600 sq. ft.	30	25
R-3, R-13, R-17, R-20	1,600 sq. ft.	20	16
RF-1, RF-2, RF-3, RF-4, RF-5	1,500 sq. ft.	18	16

1002.4 Inclusionary developments in the **MU, NC, ARTS, RC and CG** zones below may use the following modifications to height and lot occupancy **within the appropriate sections of Subtitles F, G, H, I and K** in order to achieve the bonus density:

TABLE C § 1002.4: MODIFICATIONS TO HEIGHT AND LOT OCCUPANCY FOR BONUS DENSITY

Base Zone	Matter of Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Zoning Height	Zoning FAR	Lot Occupancy	Height (feet)
RA-5, RA-11, D-1	75%	90 ft.	6.00	90%	90
MU-10, MU-22, MU-29, ARTS-4	75%	90 ft.	6.00	80%	100
MU-4, MU-17, MU-24, MU-25, MU-26 through MU-29, MU-33, NC-2, NC-3, NC-4, NC-7, NC-9, NC-14, NC-16 ARTS-1, RC-2	60%	50 ft.	2.50	75%	50
MU-5, MU-18, ARTS-2, RC-3, NC-5, NC-10, NC-17	80%	65 ft.	3.50	80%	70
MU-6, MU-19, NC-11	80%	90 ft.	6.00	80%	100
MU-7, MU-28, ARTS-3, NC-8, NC-12, NC-15	75%	65 ft.	4.00	80%	65
MU-12	80%	40 ft.	2.50	80%	50
MU-13	75%	60 ft.	4.00	75%	80
MU-13	75%	90 ft.	6.00	80%	100
MU-1, MU-15	80%	65 ft.	4.00	80%	70
MU-2, MU-16, MU-23, D-2	80%	90 ft.	6.00	90%	90
MU-9, MU-21	100%	90 ft.	6.50	100%	100
CG-1	75%	90 ft.	6.00	90%	90

Amendment #8) Deletion of the above tables within the IZ chapter and other amendments require the following amendments to the Density – Floor Area Ratio (FAR), Height and Lot Occupancy sections of the respective subtitles. These amendments simplify the IZ chapter, creates greater uniformity between the zone subtitles, and reduces potential for conflicting errors by stating regulations once.

SUBTITLE D – RESIDENTIAL HOUSE (R) ZONES

Subtitle D § 105.1 is amended as follows:

105 INCLUSIONARY ZONING

~~105.1~~ Inclusionary zoning requirements for the R zones, except R-1-A and R-1-B, are as specified in Subtitle C, Chapter 10.

105.1 Unless otherwise indicated, the requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall apply to all zones in this Subtitle.

105.2 Inclusionary zoning requirements for the R zones are as specified in Subtitle C, Chapter 10 and the zone specific development standards of this Subtitle..

105.3 The requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall not apply to the R-1-A, R-1-B, R-6, R-7, R-8, R-9, R-11, R-12, R-14, R-15, R-16, R-19, or R-21 zones, and that portion of the Anacostia Historic District within the R-3 zone.

SUBTITLE E – RESIDENTIAL FLATS (RF) ZONES

Subtitle E § 105.1 is amended as follows:

105 INCLUSIONARY ZONING

~~105.1~~ Inclusionary Zoning (IZ) requirements for the RF zones are as specified in Subtitle C, Chapter 10.

105.1 Unless otherwise indicated, the requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall apply to all zones in this Subtitle.

105.2 Inclusionary zoning requirements for the RF zones are as specified in Subtitle C, Chapter 10 and the zone specific development standards of this Subtitle.

~~105.2~~ **105.3** Development standards for projects subject to the requirements of Inclusionary Zoning are indicated by “(IZ).”

SUBTITLE F – RESIDENTIAL APARTMENT (RA) ZONES

Subtitle F § 105.1 is amended as follows:

105 INCLUSIONARY ZONING

105.1 — ~~Inclusionary zoning requirements for the RA zones are as specified in Subtitle C, Chapter 10.~~

105.1 Unless otherwise indicated, the requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall apply to all zones in this Subtitle.

105.2 Inclusionary zoning requirements for the RA zones are as specified in Subtitle C, Chapter 10 and the zone specific development standards of this Subtitle.

105.3 The requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall not apply to the RA-5 or RA-10 zones.

Subtitle F § 302.1 is amended to add a new column to Table F § 302.1 as follows:

302.1 Except as provided in other provisions of this subtitle and in Subtitle C, Chapter 15, the maximum permitted FAR in the RA-1 through RA-5 zone shall be as set forth in the following table:

TABLE F § 302.1: MAXIMUM PERMITTED FLOOR AREA RATIO

Zone	Maximum FAR	<u>Maximum FAR (IZ)</u>
RA-1	0.9	<u>1.08</u>
RA-2	1.8	<u>2.16</u>
RA-3	3.0	<u>3.6</u>
RA-4	3.5	<u>4.2</u>
RA-5	5.0 6.0 for an apartment house or hotel	<u>n/a</u>

Subtitle F § 402.1 is amended as follows:

402 DENSITY – FLOOR AREA RATIO (FAR)

402.1 The maximum permitted FAR in the RA-6 zone shall be 0.9 **(1.08 with IZ)**.

Subtitle F § 502.1 is amended as follows:

502 DENSITY – FLOOR AREA RATIO (FAR)

502.1 The maximum permitted FAR in the RA-7 zone shall be 1.8 FAR **(2.16 with IZ)**.

Subtitle F § 504.1 is amended as follows:

504 LOT OCCUPANCY

504.1 The maximum permitted lot occupancy in the RA-7 zone shall be sixty percent (60%), **or seventy five percent (75%) with IZ.**

Subtitle F § 602.1 is amended to add a new column to Table F § 602.1 as follows:

602 DENSITY – FLOOR AREA RATIO (FAR)

602.1 Except as provided in other provisions of this subtitle and in Subtitle C, Chapter 15, the maximum permitted FAR in the RA-8, RA-9, and RA-10 zone shall be as set forth in the following table:

TABLE F § 602.1: MAXIMUM PERMITTED FLOOR AREA RATIO

Zone	Maximum FAR	<u>Maximum FAR (IZ)</u>
RA-8	1.8	<u>2.16 with IZ</u>
RA-9	3.5	<u>4.2 with IZ</u>
RA-10	5.0 6.0 for an apartment house or hotel	n/a

SUBTITLE G – MIXED USE ZONES (MU)

Subtitle G § 104.1 is amended as follows:

104 INCLUSIONARY ZONING

~~104.1 Inclusionary zoning requirements for the MU zones are as specified in Subtitle C, Chapter 10.~~

104.1 Unless otherwise indicated, the requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall apply to all zones in this Subtitle.

104.2 Inclusionary zoning requirements for the MU zones are as specified in Subtitle C, Chapter 10 and the zone specific development standards of this Subtitle.

104.3 The requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall not apply to the MU-13 or MU-27 zones.

Subtitle G §§ 403.1 and 404 .1 tables are amended for consistency to the changes approved by 04-33G, which are as follows:

403 HEIGHT

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

TABLE G § 403.1: MAXIMUM PERMITTED HEIGHT/STORIES

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

404 LOT OCCUPANCY

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

TABLE G § 404.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-3	60%
	60% (IZ)
MU-4	60%
	75% (IZ)
MU-5-A MU-5-B	80%
	80% (IZ)
MU-6	80%
	90% 80% (IZ)
MU-7	75%
	80% (IZ)
MU-8	N/A
MU-9	N/A
MU-10	75%
	N/A 80% (IZ)
MU-30	N/A

Subtitle G §§ 603.1 and 604 .1 tables are amended for consistency to the changes approved by 04-33G, which are as follows:

603 HEIGHT

603.1 The maximum permitted building height, not including the penthouse, in the MU-15 through MU-22 zones shall be as set forth in the following table:

TABLE G § 603.1: MAXIMUM PERMITTED BUILDING HEIGHT

Zone	Maximum Height (Feet)
MU-15	65
	70 (IZ)
MU-16	90
MU-17	50
MU-18	65
	70 (IZ)
MU-19	90
	100 (IZ)
MU-20	70
MU-21	90
	100 (IZ)
MU-22	90
	100 (IZ)

604 LOT OCCUPANCY

604.1 The maximum permitted lot occupancy for residential use in the MU-15-through MU-22 zones shall be as set forth in the following table:

TABLE G § 604.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-15	80%
MU-16	80%
	90% (IZ)
MU-17	60%
	75% (IZ)
MU-18	80%
MU-19	80%
	90% 80% (IZ)
MU-20	100%
MU-21	100%
MU-22	75%
	80% (IZ)

Subtitle G § 704.1 is amended to delete duplicative text and to reflect the correct lot occupancy of 80 percent for MU-23 zone.

704 LOT OCCUPANCY

704.1 The maximum permitted lot occupancy for residential use in the MU-23 through MU-26 zones shall be as set forth in the following table: ~~shall be eighty percent (80%) in the MU-23 zone and seventy five percent (75%) in the MU-24, MU-25, and MU-26 zones.~~

TABLE G § 704.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-23	80%
	90% 80% (IZ)
MU-24	60%
	75% (IZ)
MU-25	60%
	75% (IZ)
MU-26	60%
	75% (IZ)

SUBTITLE H - NEIGHBORHOOD MIXED USE (NC) ZONES

Subtitle H § 103.1 is amended as follows:

103 INCLUSIONARY ZONING

~~103.1 Inclusionary zoning requirements for the NC zones are as specified in Subtitle C, Chapter 10.~~

103.1 Unless otherwise indicated, the requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall apply to all zones in this Subtitle.

103.2 Inclusionary zoning requirements for the NC zones are as specified in Subtitle C, Chapter 10 and the zone specific development standards of this Subtitle.

103.3 The requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall not apply to the NC-6 zone.

SUBTITLE K – SPECIAL PURPOSE ZONES

CG-1 is a former R-5-E zone which was exempt under the 1958 regulations. Subtitle K § 501.3 is amended to conform with **Amendment #2** and the original intent of the IZ regulations.

500 GENERAL PROVISIONS (CG-1)

500.6 The requirements of Subtitle C, Chapter 10 Inclusionary Zoning, shall not apply to the CG-1 zone.

501 DEVELOPMENT STANDARDS (CG-1)

501.3 The maximum permitted floor area ratio (FAR) in the CG-1 zone shall be 6.0, or 7.2 with IZ, ~~with a maximum residential FAR of 6.0 or 7.2 FAR with IZ.~~

Subtitle K § 502.6 is amended to reflect the changes made by ZC Case 04-33G to lot occupancy of the MU-6, MU-19 and NC-11 (former 1958 C-2-C zones). This makes the CG-2, which was CG/C-2-C consistent with the amendments of ZC Case 04-33G by keeping lot occupancy at 80 percent.

502 LOT OCCUPANCY

502.6 The maximum permitted lot occupancy for residential use in the CG-2 zone shall be eighty percent (80%), ~~or ninety percent (90%) with Inclusionary Zoning.~~

Amendment #9)The proposed amendment to Subtitle K Chapter 8, ARTS Zones, corrects the conflict between the IZ and Arts bonus FAR to reflect the FAR limits of the original Uptown Arts overlay.

801 DENSITY – FLOOR AREA RATIO (FAR) (ARTS)

801.1 Except as provided in other provisions of this chapter, the maximum permitted floor area ratio (FAR) in an ARTS zones shall be as set forth in the following table:

TABLE K § 801.1: MAXIMUM PERMITTED FAR

Zone	Use	Maximum FAR
ARTS-1	Total	2.5
	Total with IZ	3.0 (4.2)
	Non-Residential	1.5
ARTS-2	Total	3.5
	Total with IZ	4.2 (4.2)

Zone	Use	Maximum FAR
	Non-Residential	1.5
ARTS-3	Total	4.0
	Total with IZ	4.8 (IZ) 4.5
	Non-Residential	2.5
ARTS-4	Total	6.0
	Total with IZ	7.2 (IZ) 6.0
	Non-Residential	3.0

SUBTITLE C – GENERAL RULES

Amendment #10) These amend Subtitle C §§ 1003.1 and 1003.2 to clarify that the “the greater of” IZ requirements based on bonus density are calculated based on the bonus density achieved and not the full 20 percent potential bonus. In addition, it clarifies the application of the 8 percent/50 percent of bonus density requirement to buildings located in zones that permit heights greater than 50 feet but using stick frame construction.

CHAPTER 10 INCLUSIONARY ZONING

1003 SET-ASIDE REQUIREMENTS

- 1003.1 An inclusionary development which does not employ Type I construction as defined by Chapter 6 of the International Building Code as incorporated into District of Columbia Construction Codes (Title 12 DCMR) to construct a majority of dwelling units and which is located in a zone with a **primary** by-right height limit of fifty feet (50 ft.) or less shall set aside the greater of ten percent (10%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or seventy-five percent (75%) of ~~its achievable~~ **the** bonus density **utilized** to inclusionary units plus an area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1001.2(d). **For the purpose of this section primary height shall be that height permitted within a zone exclusive of any bonus height.**
- 1003.2 An inclusionary development which employs Type I construction as defined by Chapter 6 of the International Building Code as incorporated into the District of Columbia Construction Codes (Title 12 DCMR) to construct the majority of dwelling units, **or which is located in a zone with a primary by-right height limit that is greater than fifty feet (50 ft.)** shall set aside the greater of eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or fifty percent (50%) of ~~its achievable~~ **the** bonus density **utilized** to inclusionary units plus an area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1001.2(d). **For the purpose of this section primary height shall be that height permitted within a zone exclusive of any bonus height.**

Amendment #11) Proposed amendments to Subtitle K Chapter 7 Reed-Cooke Zones bring the chapter into conformity with the amendments to the Inclusionary Zoning chapter within subtitle C made as part of 04-33G. These eliminated the use of low and moderate income terminology and replaced them with Median Family Income (MFI) targets based on the tenure of the building.

702.2 In the RC-3 Zone, a building shall be permitted a maximum height of fifty feet (50ft.), not including the penthouse, provided fifty percent (50%) of the additional gross floor area made possible by the height bonus is devoted to ~~low and moderate income household~~ **inclusionary** units, as defined in Subtitle ~~B~~ **C**, Chapter ~~2~~ **10**.

Amendment #12) This amendment represents new language to the zoning regulations that codifies DCRA practices since the first implementation of the IZ program. The amendment converts the “the greater” of calculations of Subtitle C §§ 1003.1 and 1003.2 from gross square feet, which includes lobbies, hallways and other common areas to net square feet that can be measured by the space of actual IZ units. The amendment is discussed at length in the following section of this report.

1003.4 ~~{DELETED}~~ **The gross floor area requirements of Subtitle C §§ 1003.1 and 1003.2 shall be converted to net square feet based on the ratio of net square footage of residential use to the gross floor area of residential use. Net Square Footage is defined as:**

- (a) In multiple dwellings, the area of a unit that is bounded by the inside finished surface of the perimeter wall of each unit. Unit area includes all interior walls and columns.**
- (b) In one or two household dwellings, the area of a unit that includes the full thickness of exterior enclosing walls and the full thickness of walls between a unit and adjacent common areas.**

Amendment #13) Language amending § 1005.1 within Development Standards clarifies the proportionality between unit types of IZ units and market rate units. In addition, DCRA has requested the Zoning Commission consider language that reduces the impact on small projects and those without two-bedroom units of the proportionality rule. The rule can be mathematically impossible to meet and in some cases, may result in set aside requirements that significantly exceed the “greater of” calculations of §§ 1003.1 & 1003.2. The proposed language is thoroughly discussed in the following section of this report.

1005 DEVELOPMENT STANDARDS REGARDING INCLUSIONARY UNITS

1005.1 The proportion of studio and one-bedroom inclusionary units shall not exceed the proportion of the comparable market rate units for each unit type, **except in cases where the inclusionary development requirement of Subtitle C §§ 1003.1 and 1003.2 is less than the smallest available two-bedroom unit.**

Amendment #14) Finally, amendments to § 1006.1 correct the inadvertent deletion of text added by 14-13A, but removed by 04-33G. The language

1006 OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING

1006.1 Inclusionary units resulting from the set-aside required for penthouse habitable space as described in Subtitle C § 1001.2(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of Subtitle C §§ 1505.13 through 1505.16, except that the calculation of § 1505.15 shall be based on the maximum permitted residential FAR, when:

III. DISCUSSION OF AMENDMENTS

A. AMENDMENTS #1 THROUGH #11, #13 AND 14 CORRECTIONS & CLARIFICATIONS

The above proposed amendments largely reflect simple corrections, clarification, and reorganization and consistency efforts to improve the administrative process. They do not reflect changes in policy or substantive changes.

B. AMENDMENT # 12 GROSS TO NET SQUARE FEET

This section discusses how IZ affordability requirements, expressed in terms of gross square feet in the zoning regulations, are converted to deliverable net square feet of IZ units; and discusses the recommended language that codifies the process that has been used since the program began into the zoning regulations.

Subtitle C §§ 1003.1 and 1003.2 express the IZ requirements as the greater of either:

- eight or 10 percent “of the gross floor area dedicated to residential use including penthouse habitable space”, or
- 50 or 75 percent “of its achievable bonus density to inclusionary units...”

Gross floor area of residential use and bonus density¹, by definition include residential lobbies, hallway, and amenity spaces such as exercise rooms and lounges to which in general, IZ occupants have access provided amenity fees are mandatory and therefore built into the maximum purchase price.

However, determining if an applicant has met the requirement can only be measured by looking at the net square feet of the actual IZ units. The IZ unit square footage is ‘net’ of all of these common

¹ Retail and other non-residential uses are excluded from the Gross floor area of residential use, but non-residential uses are included in bonus density.

areas. Working with DCRA, OP has proposed a definition based on the Building Owners and Managers Association's (BOMA) industry standard. The proposed definition is:

1003.4 ~~{DELETED}~~ **The gross floor area requirements of Subtitle C §§ 1003.1 and 1003.2 shall be converted to net square feet based on the ratio of net square footage of residential use to the gross floor area of residential use. Net Square Footage is defined as:**

(a) In multiple dwellings, the area of a unit that is bounded by the inside finished surface of the perimeter wall of each unit. Unit area includes all interior walls and columns.

(b) In one or two household dwellings, the area of a unit that includes the full thickness of exterior enclosing walls and the full thickness of walls between a unit and adjacent common areas.

Conversion of the gross square footage requirements to a measurable net square footage of units is a several step process, which includes:

1. The Certificate of Inclusionary Zoning Compliance (CIZC), which becomes part of the IZ enforcement covenant, collects project data from a building permit applicant. Relevant project data includes:
 - Land Area,
 - Total Gross Floor Area of the project including non-residential uses,
 - Total Residential Gross Floor Area, total Net Residential Area, and the ratio of Net to Gross Residential Area of the project.
 - Total Net square feet of each IZ unit.
2. The 8 to 10 percent of gross residential use is compared to the 50 to 75 percent of bonus density to determine which is greater – this is the IZ requirement stated in gross square feet.
3. The IZ requirement is then multiplied by the ratio of net to gross residential use to convert the requirement to net square feet.
4. Finally, this net square feet requirement is compared to the net square feet of the individual IZ units listed on the CIZC to ensure that enough square feet within IZ units have been provided.

The example below illustrates the process.

Sample Conversion of Gross IZ Requirements to Net Square Feet

Land Area	10,000			
Zone	MU-4			
	FAR	Gross	Net	Ratio
Matter of Right Floor Area	2.5	25,000		
Total Floor Area	3.0	30,000		
Bonus Density		5,000		
Non-Residential Gross Floor Area		2,500		
Total Residential Area		27,500	22,550	0.82
IZ Requirement				
Percent of Residential Area	10%	2,750	2,255	
Percent of Bonus Density	75%	3,750	3,075	

The example uses a hypothetical project within the MU-4 of 30,000 square feet in size with 2,500 square feet dedicated to non-residential uses and 27,500 square feet of gross residential use. Using the proposed definition, the net residential square feet is 22,250 for a ratio (or building efficiency) of 0.82. The ratio is then applied to the 3,750 gross square feet requirement based on 75 percent of the bonus density to equal 3,075 net square feet. In this example, the total net square feet of all IZ units would have to equal or exceed the required 3,075 net square feet in order to be approved. In this case, because of the non-residential use and the full use of bonus density, the net square feet of IZ units equals approximately 13.6 percent of the total net residential square feet of all units.

This process was established by DCRA working with OP when IZ was first implemented in 2009, and is consistent with the analysis OP conducted in order to balance the affordability requirements with the 20 percent bonus density. This process is also applied to Planned Unit Development (PUD) cases, which also usually state the IZ requirement in gross terms.

C. AMENDMENT #13 UNIT PROPORTIONALITY

The 2016 Zoning Regulations changed the proportionality rule ensure that IZ units were distributed across all unit types rather than concentrated to studio units. The 1958 regulations stated:

2605.2 The proportion of studio, efficiency, and one-bedroom inclusionary units to all inclusionary units shall not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units.

This language grouped studio and one bedroom IZ units together for comparison to the market rate units and potentially permitted a developer to make all the IZ units studios so long as the ratio did not exceed combined ratio of market rate studio and one-bedrooms. In response to this concern, the 2016 regulations were changed to:

1005.1 The proportion of studio and one-bedroom inclusionary units shall not exceed the proportion of the comparable market rate units for each unit type.

As a result of the change, DCRA has received consistent questions from developers and has asked OP propose language for the Zoning Commission's consideration. At issue is under certain circumstances this requirement is mathematically impossible to meet. For instance, in a building that is only providing studio and one-bedrooms, the only way to meet it is if the proportions of IZ units are exactly equal to market rate units. In most cases this is not possible and requires: 1) the developer to provide a two-bedroom unit, and 2) set aside that two-bedroom as an IZ unit. In some small projects providing a two-bedroom unit may require the developer to significantly exceed the IZ requirement. OP discussed this issue on page 10 of the report dated April 4, 2016 in response to public testimony received as part of case 04-33G. Below is an excerpt of that report (p.11) that discusses OP's research conducted at the time.

“Smaller projects do tend to set aside 12 percent more IZ square feet than required compared to 2 percent for all projects, but not the 40 percent more the table above illustrates. In addition, small projects do tend to set aside a greater percentage of two-bedroom IZ units (58 percent of units) than larger projects (18 percent of units). However, smaller projects are more likely to be ownership projects, which usually have a greater percentage of two-bedroom units due to demand.

What negative impact this has on small developments is unclear. Testimony mentioned the number of small IZ projects that are not feasible and therefore never submit CIZC applications. The testimony seemed to suggest IZ caused it to occur at a more frequent rate. Developers have stated in other venues that they pursue options on many properties before being able to find a feasible site and that many transactions do not close for a variety of reasons. This makes it hard to separate if a property sale failed due to the impact of IZ, the expectations of the landowner, or some other challenge. OP can state that smaller IZ projects have delivered in a wide range of neighborhoods from H Street NE, to Georgia Avenue, NW and down in Shaw. The map provided in Figure 12 of OP's Technical Appendices report dated February 26, 2016 shows small IZ projects are scattered across a variety of neighborhoods in all Wards with the exception of Ward 3. In fact, the first IZ unit sold was in an 11 unit building that received no bonus density in Shaw.”

To this OP adds that the effective requirement to provide a two-bedroom unit when all other units are studio or one-bedrooms may create structural challenges since many developers try to stack units of similar configuration above one another. To date no developer as requested a variance to the proportionality requirement. As such, it continues to remain unclear how much of an impediment this may be to development. However, in response to DCRA's request, OP proposed the following recommended language be added to § 1005.1:

1005.1 The proportion of studio and one-bedroom inclusionary units shall not exceed the proportion of the comparable market rate units for each unit type, **except in cases where the inclusionary development requirement of Subtitle C §§ 1003.1 and 1003.2 is less than the smallest available two-bedroom unit.**

This would permit a developer flexibility to allocate IZ units between studio and one-bedrooms if 1) no two-bedrooms were provided; or 2) if the IZ requirement was less than the smallest two-bedroom provided.