

A RESOLUTION

21-107

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To declare the sense of the Council in support of amendments to the inclusionary zoning regulations, Chapter 26 of Title 11 of the District of Columbia Municipal Regulations, which require new and rehabilitated residential developments to include housing units permanently affordable to low- and moderate-income residents in exchange for permitting housing developers to obtain additional zoning density as a matter of right, to increase the availability of affordable housing.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015”.

Sec 2. The Council finds that:

(1) The District of Columbia housing and rental market is among the most expensive in the country.

(2) Many of the District’s residents spend greater than 30% of their annual income on housing costs.

(3) The Inclusionary Zoning (“IZ”) regulations of the District of Columbia, Chapter 26 of Title 11 of the District of Columbia Municipal Regulations, are a critical component of the city’s overall strategy to create affordable housing units. The regulations require developers constructing new residential units to include a certain number of affordable units to be rented or sold at a price below market rate. The regulations create 2 levels of affordability: 80% of Area Median Income (“AMI”) and 50% of AMI. Prices are calibrated so that an individual earning either 80% or 50% AMI will spend between 38 to 41% of his or her annual income on housing. To offset the cost to developers of these mandates, developers are provided with bonus density, enabling the construction of an increased number of units above what the applicable zoning regulations would otherwise permit.

(4) As of May 2014, 477 IZ units in 57 projects throughout the District have been constructed, are under construction, or are planned. Of these, 78% of the units are priced at the 80% AMI level; the remaining 22% of units are priced at the 50% AMI level. According to 2013 data from the U.S. Census Bureau, the Washington, D.C. area had the highest median income in the United States at \$90,149. AMI includes income data from Maryland and Virginia residents in addition to District residents.

ZONING COMMISSION  
District of Columbia  
CASE NO. 04-33G  
EXHIBIT NO. 154  
District of Columbia  
CASE NO. 04-33G  
EXHIBIT NO. 154

**ENROLLED ORIGINAL**

(5) Many District residents earn below 80% AMI and are in need of affordable housing options.

(6) IZ can be a more effective tool to the extent that the IZ regulations are revised to require developers to produce more affordable units and at deeper affordability levels. Such revisions, however, must not be so significant as to discourage, or make financially unfeasible, future residential development plans.

(7) Construction of residential units is at an all-time high in the District. The sooner any revision is made to the IZ regulations, the greater the impact that revision will have.

Sec. 3. (a) For the reasons set forth in section 2, it is the sense of the Council that the Zoning Commission and the Mayor must revise the Inclusionary Zoning regulations, Chapter 26 of Title 11 of the District of Columbia Municipal Regulations, to accomplish the following objectives:

(1) Increase the number of Inclusionary Zoning units produced overall;

(2) Increase the number of units produced that are affordable for lower income households;

(3) Set maximum rent, purchase price, and eligibility thresholds in a manner that ensures affordability for an adequate pool of applicants;

(4) Achieve greater affordability by lowering the upper affordability limits for moderate income households;

(5) Ensure that the zoning density bonus needed to support the cost of IZ units is available and usable, by allowing greater flexibility within the parameters of the Comprehensive Plan and offering additional bonus density as necessary to compensate for increased affordability; and

(6) Clarify the intended role for qualified nonprofits, the Mayor, and the District of Columbia Housing Authority in exercising the right of first refusal to purchase and then rent units to low-income and very-low-income residents.

(b) The Zoning Commission and the Mayor should act with care and thoroughness in their review of the existing regulations, the market, and all possible alternatives, when determining the best course of action to achieve these objectives.

Sec. 4. The Chairman shall transmit copies of this resolution, upon its adoption, to the Mayor, the Office of Planning, and the Zoning Commission.

Sec. 5. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**TO:** All Councilmembers

**FROM:** Chairman Phil Mendelson  
Committee of the Whole

**DATE:** June 2, 2015

**SUBJECT:** Report on PR 21-137, “Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015”

The Committee of the Whole, to which PR 21-137, the “Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

CONTENTS

I.	Background And Need.....	1
II.	Legislative Chronology.....	4
III.	Position Of The Executive.....	4
IV.	Comments Of Advisory Neighborhood Commissions.....	4
V.	Summary Of Testimony.....	5
VI.	Impact On Existing Law.....	7
VII.	Fiscal Impact.....	7
VIII.	Section-By-Section Analysis.....	7
IX.	Committee Action.....	8
X.	Attachments.....	8

**I. BACKGROUND AND NEED**

On April 14, 2015, Proposed Resolution 21-137, the “Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015” was introduced by Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, Nadeau, Orange, Silverman, and Chairman Mendelson. PR 21-137 would express the Council’s desire that the Zoning Commission and the Mayor work swiftly to revise the District’s Inclusionary Zoning (IZ) regulations.<sup>1</sup>

The District currently offers a variety of tools to ease the burden of housing costs for residents. Some of these include the Housing Production Trust Fund, which provides loans and grants to developers of affordable housing for new construction and preservation; the Local Rent Supplement Program, which provides vouchers to cover the cost of market rent above 30 percent of a tenant’s income; the Home Purchase Assistance Program, which provides closing costs and

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<sup>1</sup> Title 11, Chapter 26, of the District of Columbia Municipal Regulations

interest-free loans to qualified applicants to purchase a home; Affordable Dwelling Units, which are below-market-rate for-sale and for-rent units available through inclusionary zoning, PUDs, District government land dispositions, tax incentives, public financing, etc., and which are restricted to households whose income falls within a certain range; and assistance programs that provide funding for certain home renovations, emergency rental assistance, and counseling services. Further, the District's tool bag for affordability includes rent control; the District is one of a few cities in the United States with a rent stabilization law. Also, the District has kept down the residential real property tax rate—the lowest rate in the Washington Metropolitan area—and has a “circuit breaker” for low income households whereby both tenants and homeowners can obtain a refundable tax credit for their real property tax (for tenants, this is calculated as a portion of their rent). Additionally, tenant groups threatened with displacement due to the sale of their apartment building can receive financial and technical assistance to purchase the building and convert it into cooperatives or condominiums.

Inclusionary Zoning is unique among these programs because it supplies the city with new, permanently affordable units, and it does so at no additional cost to taxpayers. New rental or condominium buildings with more than 10 units, and renovations increasing the building size by over 50 percent, are required by law to include an assigned percentage of affordable units in exchange for a density bonus.

The program was established through a combination of: (a) adoption of Inclusionary Zoning Regulations by the Zoning commission in 2006 (case 04-33); and (b) adoption by the Council of the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Law 16-275). Implementation of the program, however, did not begin until 2009 after the issuance of regulations by the Office of the Deputy Mayor for Planning and Economic Development in 2009.<sup>2</sup> The program is administered by the Department of Housing and Community Development (DHCD).

The goals for the program are to seek equitable growth of new residents, produce affordable housing for a diverse labor force, create mixed income neighborhoods, and increase homeownership opportunities for low and moderate income persons. At the public hearing on PR 21-137, Leslie Steen, a housing developer in the District for 40 years, stated:

Inclusionary Zoning is a tool that can spread affordable housing across the city in a manner that our other programs do not and probably will never be able to do. Our other affordable housing programs concentrate affordable housing in certain parts of the city, exacerbating our economic divide and all the ills that come with it. The promise of affordable housing in neighborhoods that don't have any today is why I have been a supporter of this program.<sup>3</sup>

The program has suffered from criticism over the years due to a slow start and administrative challenges. The burst of the housing bubble and the recession that followed coincided inopportunistically with the roll-out of IZ. As a result, only a few IZ units were produced in the early years, and, of the units produced for-sale, most sat on the market for long periods of time. To make matters worse, the program's administration needed to be reworked to match

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<sup>2</sup> Title 14, Chapter 22, of the District of Columbia Municipal Regulations

<sup>3</sup> Testimony of Leslie Steen, Public Witness, at the May 28, 2015 Public Hearing on PR21-137.

qualified tenants and buyers to units more efficiently. Fortunately, today, the housing market is strong, and the number of building permits issued in the city is rising each year. Hundreds of IZ units are in the production pipeline or beginning to hit the market. Moreover, DHCD is preparing to issue a final rulemaking to revise its administrative regulations and improve the department's ability to run the program effectively.

At the public hearing on PR 21-137, the Committee heard testimony from a variety of perspectives, including from both for-profit and not-for-profit developers, housing advocates, and residents living in affordable units. The testimony was favorable to IZ and PR 21-137. Lisa Mallory, CEO of the District of Columbia Building Industry Association, testified that the current IZ regulations are "not currently a detriment to the production of housing."<sup>4</sup> However, she emphasized the importance of keeping in mind the costs of development and long-term operational costs of housing and encouraged the Council and Zoning Commission to provide the necessary flexibility and incentives to make the program viable in the long run. Cheryl Cort, Policy Director of the Coalition for Smarter Growth, called the IZ program "ripe for revision," and stated that "we have enough early experience to see that it is working as designed, but not accomplishing the affordable housing goals we had originally sought to achieve." The Coalition would like to see a reduction in the top income range currently set at 80 percent AMI and an increase in the number of units produced at the 50 percent AMI range. When questioned, Ms. Cort stated that the Coalition was not wedded to percentages specified in her written testimony, and stated that they would need to be determined as part of an overall economic feasibility assessment related to the costs of construction.

Through PR 21-137, the Committee is urging the Office of Planning and the Zoning Commission to undertake that assessment now and determine how far IZ can be pushed without making the District an unprofitable or undesirable place to build. The Committee appreciates the need to strike a balance, but also believes that IZ can be revised to achieve more. Currently, the program includes 88 projects totaling 734 affordable IZ units in various stages of production. OP is additionally tracking another 123 projects in various stages of predevelopment that have the potential to deliver another 1,940 units in the next several years. The bonus density provided to these projects ranges from nine percent to 20 percent. To date, IZ has delivered a total of 118 affordable units, including 105 rental units. Of the rental units, 61 have been leased; 11 of the 13 for-sale units are sold or under contract. Of the IZ units built or currently in production, 81 percent are priced at 80 percent AMI and just 19 percent are priced at 50 percent AMI.<sup>5</sup> The 2015 AMI for the Washington, D.C. Metropolitan Area is \$109,200.<sup>6</sup> AMI includes income data from Maryland and Virginia residents, in addition to District residents.

To make the most Inclusionary Zoning as a tool, and to achieve the stated goals of the program, the city must expand IZ as far as the market will allow. In the words of Office of Planning Director Shaw, IZ is "a key tool for fulfilling the District's vision of achieving and sustaining a diverse, vibrant and inclusive city."<sup>7</sup> Accordingly, the Committee recommends approval of PR 21-137.

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<sup>4</sup> Testimony of Lisa Mallory, CEO, DCBIA, at the May 28, 2015 Public Hearing on PR21-137.

<sup>5</sup> Statistics on IZ were provided by the Office of Planning.

<sup>6</sup> U.S. Department of Housing and Urban Development

<sup>7</sup> Testimony of Eric Shaw, Director of Planning, at the May 28, 2015 Public Hearing on PR21-137.

## II. LEGISLATIVE CHRONOLOGY

- April 14, 2015 PR 21-137, “Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015,” is introduced by Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, Nadeau, Orange, Silverman, and Chairman Mendelson.
- April 24, 2015 Notice of Intent to Act on PR 21-137 is published in the *District of Columbia Register*.
- April 24, 2015 Notice of a Public Hearing on PR 21-137 is published in the *District of Columbia Register*.
- April 28, 2015 The Committee of the Whole holds a public hearing on PR 21-137.
- June 2, 2015 The Committee of the Whole marks-up PR 21-137.

## III. POSITION OF THE EXECUTIVE

Eric Shaw, Director of the Office of Planning, testified on behalf of the Executive. Director Shaw described the history of the IZ program and an update on its current status. He stated that the Office of Planning (OP) works closely with the Department of Consumer and Regulatory Affairs and the Department of Housing and Community Development to actively track and monitor the program’s growth and productivity. Currently, the program includes 88 projects totaling 734 affordable IZ units in various stages of production. OP is additionally tracking another 123 projects in various stages of predevelopment that have the potential to deliver another 1,940 units in the next several years. The bonus density provided to these projects ranges from nine percent to 20 percent. To date, IZ has delivered a total of 118 affordable units, including 105 rental units. Of the rental units, 61 have been leased; 11 of the 13 for-sale units are sold or under contract. Director Shaw emphasized the value of IZ—particularly its success at delivering affordable housing in high-cost areas of the city such as Wisconsin and Connecticut Avenues, Dupont Circle, U Street, and Adams Morgan. He voiced his support for expanding the program, stating that “the program can do better,” and “OP is committed to working with the Zoning Commission and DHCD to improve the program.”

## IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from any Advisory Neighborhood Commission.

## V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on PR 21-137 on Tuesday, April 28, 2015. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

**Lisa Mallory, CEO, DC Building Industry Association**, testified in support of urging the Zoning Commission to reevaluate the regulations around the inclusionary zoning program. In doing so, she stressed the need for the District to balance the need for affordable housing with the financial reality of constructing and maintaining subsidized units. She further stated that the program does not provide the necessary incentives or flexibility to be a sustainable program in the long term.

**Brenda Batts, Public Witness**, testified about her experience as the owner of an affordable dwelling unit. She described her frustration with the restrictions placed on the unit that prevent her from being able to take full advantage of the equity in the home. She stated that her home will increase in value by \$37,580 in 20 years while the other units in her building will increase \$100,000 in just eight years.

**Gerri Michalska, Public Witness**, testified in support of the resolution and expressed her hope that the Zoning Commission will strengthen the program for moderate and lower income DC residents who are priced out of DC's rising housing market. She also spoke about how great the need for lower cost housing is among DC's lowest income residents.

**Sarah Scruggs, Director of Advocacy and Outreach, Manna Inc.**, testified in support of the resolution and called for further transparency in the program and oversight by the Council. Ms. Scruggs called the current lottery process "extremely burdensome," suggested that DHCD should use marketing plans as the sole method of selling IZ units, and identified a need for homebuyer education. Additionally, Ms. Scruggs spoke about difficulties IZ owners face due to the resale formula and restrictions associated with ownership, as well as the challenge of high or rising condominium fees.

**Cheryl Cort, Policy Director, Coalition for Smarter Growth**, testified in support of the resolution. She stated that most of the city's housing need is among residents earning 50 percent or less than the Average Median Income. Ms. Cort described the success of the IZ program and the continuing upward trend of housing construction in the city. She further made comments regarding problems in the administration of the program and her support for the proposed revisions to DHCD's regulations on IZ. Ms. Cort also stated that an expansion of the program will require corresponding increases in bonus density to allow for enough profitability for developers to continue building in DC.

**David Franco, Principal, Level 2 Development**, testified in support of the resolution. Mr. Franco discussed his experience as a developer of projects that produced IZ units. He noted the importance of the 20 percent zoning density bonus that enabled his projects to set aside eight percent of the units in the development as affordable at the 80 percent AMI level without impacting the profitability of the endeavor. He explained that a tremendous amount of increased

bonus density would be necessary to offset the economic impact of providing units at the 50 percent AMI level. He stated that nonprofit entities, such as Habitat for Humanity and Manna, are better able to provide the lower level affordability units and encouraged “out of the box thinking” to assist and empower nonprofits to do more in this realm.

**Leslie Sheen, Vice President of Real Estate, Wesley Housing Development Corp,** testified in support of the resolution. Ms. Sheen has worked as a housing developer since 1975. She described the evolution of the program and its special ability to create affordable housing across the city, particularly in otherwise exclusive, amenity-rich neighborhoods.

**Jim Campbell, Somerset Development Company,** testified in support of the resolution and described his experiences as a developer in the city. He stated that his projects have not been impeded at all by the IZ requirements, as the program is currently structured to achieve a return with neutral impact.

**Ed Lazere, Executive Director, DC Fiscal Policy Institute,** testified in support of the resolution. He spoke about the value of the IZ program in ensuring that new housing developments throughout DC include affordable homes for moderate-income residents. He further testified that the need for the IZ program has grown since was first adopted because the city’s stock of low-cost housing continues to decline to the point where there is little or no low-cost private market housing. He reiterated the resolution’s objectives of increasing the number of IZ units produced overall, increasing the number of units that are affordable for lower-income households, and setting maximum rent, purchase price, and eligibility thresholds in a manner that ensures affordability for an adequate pool of applicants.

**Sam Jewler, Community Organizer, Jews United for Justice,** testified in support of the resolution. Mr. Jewler reiterated the resolution’s objectives of increasing the number of IZ units produced overall, increasing the number of units that are affordable for lower-income households, and setting maximum rent, purchase price, and eligibility thresholds in a manner that ensures affordability for an adequate pool of applicants. He also highlighted the high number of people of color who have left the city with the decline of affordable rental units in the past decade.

**Tad Baldwin, Public Witness,** testified in support of the resolution. Mr. Baldwin discussed his experience with the inclusionary zoning program in Montgomery County, Maryland. He spoke highly of both programs and stated that he believes the District’s IZ program is the lowest cost method to create affordable housing units in diverse locations.

**Elinor Hart, Public Witness,** testified in support of the resolution. She focused her testimony on the urgency of the issue and called DC’s affordable housing situation “desperate” and a “crisis.”

**Steven Cook, Member, National City Christian Church,** testified in support of the resolution. He called inclusionary zoning a “valuable tool” and stated that the program is working, though there is still room for improvement.



*Tanya Morris, Public Witness*, testified in support of affordable housing as an owner of an affordable unit in Columbia Heights. While she is very happy to be an owner, she expressed the hardship of not being able to take advantage of all the benefits of home ownership, such as wealth building.

*Joseph Slovynec, Public Witness*, testified in support of the resolution. He further stated his desire to see developers exhibit more of a sense of economic responsibility for the neighborhoods they work in.

*Suzanne Des Marais, President, 10 Square Real Estate*, testified in support of the resolution. Ms. Des Marais is a realtor who has worked extensively with selling IZ units. She described some of the administrative challenges present, particularly in relation to the lottery process. She states that it takes 150 applicants to find one qualified buyer of an IZ unit. She additionally mentioned the inspection process, calling it “horrendous” and “unnecessary.”

Other written comments submitted to the Committee are attached to this report. Included are two copies of the form email campaign that generated 52 emails in support of PR 21-137 between April 14<sup>th</sup> and April 30<sup>th</sup>. The Committee received no testimony or comments in opposition to PR 21-137.

## VI. IMPACT ON EXISTING LAW

PR 21-137 has no impact on existing law. It is a statement of the Council urging the Mayor and the Zoning Commission to expeditiously revise the Inclusionary Zoning regulations.

## VII. FISCAL IMPACT

According to District of Columbia Official Code § 1-301.47a, fiscal impact statements are not needed for emergency declaration, ceremonial, or sense of the Council resolutions.

## VIII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	Short title.
<u>Section 2</u>	States the findings of the Council regarding the need for more affordable housing in the District and the importance of Inclusionary Zoning as a tool for achieving this goal.
<u>Section 3</u>	States the objectives the Council would like the Zoning Commission and the Mayor to achieve with respect to revising the Inclusionary Zoning regulations in a way that will expand the program.

Section 4 Provides that the Secretary will transmit copies of the resolution to the Mayor, the Office of Planning, and the Zoning Commission.

Section 5 Effective date.

## IX. COMMITTEE ACTION

On June 2, 2015, the Committee met to consider PR 21-137, the “Sense of the Council in Support of Improving Inclusionary Zoning Resolution of 2015.” The meeting was called to order at 10:38 a.m., and PR 21-137 was item IV-B on the agenda. After ascertaining a quorum (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, Orange, May, McDuffie, Nadeau, Silverman, and Todd present), Chairman Mendelson circulated a revised print of PR 21-137 and moved the print with leave for staff to make technical and conforming changes. During an opportunity for discussion, Councilmember Silverman acknowledged the historic investments the Council is making in affordable housing in the fiscal year 2016 budget. She then spoke positively about IZ’s ability to leverage market-rate development to create affordable housing in neighborhoods across the city. Lastly, she stated that she believed PR 21-137 was already having an effect, as the Office of Planning has committed to sending analysis to the Zoning Commission this summer. Thereafter, Councilmember Bonds made a statement thanking the Chairman for moving the measure and noting the importance of building affordable housing across the city.

Following an opportunity for additional discussion, the vote on the print was unanimous (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, Orange, May, McDuffie, Nadeau, Silverman, and Todd voting aye).

The Chairman then moved the report with leave for staff to make technical, conforming, and editorial changes. After an opportunity for discussion, the vote on the report was unanimous (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, Orange, May, McDuffie, Nadeau, Silverman, and Todd voting aye). The meeting adjourned at 10:57 a.m.

## X. ATTACHMENTS

1. PR 21-137 as introduced.
2. Written Testimony.
3. Statement made by Councilmember Silverman at the June 2<sup>nd</sup> Committee mark-up.
4. Committee Print for PR 21-137.