



January 12, 2022

VIA IZIS

Zoning Commission of the District of Columbia
441 4th Street, NW - Suite 210
Washington, DC 20001

Re: OAG Supplemental Filing OAG's Text Amendment Petition to Remove Exemption from Inclusionary Zoning for Certain Downtown Zones (Z.C. Case No. 21-23)

Dear Members of the Zoning Commission:

The Attorney General for the District of Columbia (“OAG”) repeats its conviction that **now** is the time for the Zoning Commission (the “**Commission**”) to take action to remove an outdated loophole from the Inclusionary Zoning (“**IZ**”) requirements – an exemption the Commission granted 15 years ago based on the Office of Planning’s forecast that property owners in the exempted areas would not build housing. This prediction has proved woefully inaccurate given that the exempted areas, including NOMA and areas in Southwest and Southeast, have experienced some of the most intense residential development since IZ was launched 15 years ago. Further delay in closing this loophole in the name of unspecified “economic data or financial modeling” as requested by the Office of Planning (“**OP**”) - which promised to submit a text amendment to close this loophole over a year ago - promotes gentrification and increases economic segregation contrary to the Comprehensive Plan’s vision to “grow an inclusive city.”

Immediate Setdown Would Allow OP Time to Finalize Its Long-Awaited Economic Analysis

OAG repeats its request that the Commission set down this petition at its January 13, 2022, public meeting for a public hearing. OAG asserts that doing so would provide OP over a month to complete the economic data and financial analysis that OP told the Commission it would submit by May 2021, as detailed below:

- **September 4, 2020** – In its setdown report in Z.C. Case No. 20-02, OP stated that it would submit proposed text amendments later in the fall 2020 to “apply the regular IZ requirements to certain zones that are currently exempt from the program” ([Ex. 6 at 3](#));
- **September 14, 2020** – In its subsequent public testimony in Z.C. Case No. 20-02, OP reiterated that it would submit proposed text amendments later in fall 2020, including one to expand the IZ program to currently exempt zones ([Sept. 14, 2020 Meeting Transcript](#) at 72-73);
- **December 17, 2020** – In its status update to the Commission on OP’s proposed IZ text amendments, OP stated that it would delay its proposed text amendment to remove the IZ exemption for the Downtown Zones by more than six months to May 2021, and identified the specific research and economic analysis OP would complete in those intervening months ([Dec. 17, 2020 Meeting Transcript](#) at 33-34);
- **January 18, 2021** – In its setdown report in Z.C. Case No. 21-02, OP stated that it would not include removing the IZ exemption for the Downtown zones in that case, but instead submit an evaluation of the feasibility of removing the IZ exemption for the Downtown zones by spring 2021 ([Ex. 2 at 2](#));
- **January 28, 2021** – In its subsequent public testimony in Z.C. Case No. 21-02, OP further delayed its timetable to submit a proposed text amendment to later in “the late spring, early summer” of 2021 ([Jan. 28, 2021 Meeting Transcript](#) at 79);
- **January 28, 2021** – At this same public meeting, the Commission approved Z.C. Case No. 20-14, a design review in the D-5 zone that included 18 voluntary affordable units, approximately 30 fewer

affordable units than would be required if the Commission had removed the IZ exemption for the Downtown zones as proposed by OP in September 2020;

- **July 8, 2021** – OP presented its analysis of the IZ exemption for the Downtown zones originally scheduled for late fall 2020 and outlined the additional areas of analysis OP stated it would complete over the “next several months through the fall” ([July 8, 2021 Public Meeting Transcript](#) at 12-31);
- **December 2, 2021** – More than a year after OP initially proposed to remove the IZ exemption for the Downtown zones, OAG filed this petition in Z.C. Case No. 21-23 with the Commission and OP and specifically identified the Commission’s pending review of Z.C. Case No. 21-12 that proposed to build 520 units without a single affordable unit – instead of the approximately 42 units that would be required if the Commission removed the IZ exemption for the Downtown zones as proposed by OP in September 2020; and
- **December 9, 2021** – The Commission approved Z.C. Case No. 21-12 without considering OAG’s petition that would have ensured that the project provided approximately 42 IZ units instead of the 520 market-rate units proposed by the developer and approved by the Commission.

The delay in finalizing the economic and financial data has allowed at least 90 IZ units to not be created, despite the District’s affordable housing crisis acknowledged by the Mayor’s 2019 Housing Initiative (Mayor’s Order 2019-036, the “**Mayor’s Order**”), whose targets for affordable housing have not been achieved in either of the planning areas that include Downtown zones currently exempt from IZ.

Other Text Amendments Provide No Economic Analysis

OAG notes that the Commission has set down other text amendments without detailed economic analysis, including the removal of another IZ loophole in Z.C. Case No. 21-12. Similarly, at this same January 13, 2022, public meeting, the Commission will consider setting down Z.C. Case No. 21-02, which also does not have a detailed supporting economic analysis.

“Great Weight” to OP Does Not Require the Commission to Relinquish its Independence

OAG notes that the “great weight” that the Commission must provide to OP’s recommendations does not require the Commission to blindly follow those recommendations but instead that the Commission specify in writing when it disagrees with OP’s recommendations and provides a justification for not following OP’s recommendations.

Immediate Setdown Would Enable Public Involvement

OAG notes the recent comments of the Deputy Mayor for Economic Development and the former director of the Office of Planning that no one person or agency in the District has all the answers when it comes to the current housing crisis and that instead the District needs “to use every tool, to pursue every site, and to engage every resident, landowner, and partner” to achieve the District’s housing goals.¹ The District’s housing crisis is a collective problem and therefore requires collective solutions. No single entity should hold a monopoly on solutions, and new ideas should not be unreasonably impeded from entering the public debate.

OAG views this petition as the start of an essential public conversation and collaboration about the IZ program and affordable housing; a process that requires the input of not only OP, but also of the public at large. Delaying this conversation on a specific proposal would effectively prevent public comment on petitions which in turn enforces the belief that the text amendment petition process is arcane and beyond the understanding of the general public and therefore the sole provenance of an elite few. OAG believes that this is a result that harms the public interest and undermines the Commission’s own commitments to increased equity of process and participation.

¹ [Comments from the Mayor’s December 16, 2021 press conference concerning affordable housing in Ward 3.](#)

Request for Emergency Action on Z.C. Case No. 21-23

OAG repeats its request that the Commission also take emergency action to adopt the proposed text amendment in order to prevent the loss of more potential IZ units in the Downtown zones currently exempted from IZ. OAG asserts that the District’s current affordable housing crisis and the fact that the exempted Downtown zones are not meeting their affordable housing targets established by the Mayor’s Order justify emergency action as necessary for the “immediate preservation of the public...welfare.” The risk of not taking emergency action – or of not setting down the petition for a public hearing – that would permanently prevent the economic integration of a significant portion of the District far outweighs the potential harm to property owners if the Commission subsequently reversed or limited the emergency action in response to OP’s data and analysis and comments from the public.

Respectively submitted,

KARL A. RACINE

Attorney General for the District of Columbia

/s/ Maximilian L.S. Tondro

Chief, Land Use Section

/s/ Alexandra L. Cain

Assistant Attorney General

Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2022, a copy of the foregoing letter was served on the following by email.

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Via Email

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