

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

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**DATE:** March 1, 2021

**SUBJECT:** ZC Case 21-XX – Set Down and Prehearing Report for IZ-XL Phase #2 – Applying Inclusionary Zoning to Conversions of Non-residential Buildings to Residential Use<sup>1</sup>.

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**I. RECOMMENDATION**

The Office of Planning (“OP”) recommends that the Zoning Commission **set down** for a public hearing amendments to Subtitle C of the Zoning Regulations to apply the existing Inclusionary Zoning (“IZ”) program to buildings that are converted from non-residential use to residential use.

This is the second phase of amendments for additional inclusionary housing opportunities, which is known as IZ-XL<sup>2</sup>. OP requests flexibility to work with the Office of Attorney General (“OAG”) to further refine the proposed language if necessary. This report also serves as the prehearing report required by Subtitle Z § 501.

**II. ANALYSIS**

IZ has proven to be a useful tool for achieving more diverse communities through dispersing affordable housing. It helps generate affordable units in places with strong market demand, where there are often high levels of public services available, and it contributes to the economic health of a city by helping retain workforce households. IZ is only one of many tools in a comprehensive affordable housing program.

Under the current IZ regulations, non-residential buildings converted to residential use with 10 or more dwelling units are exempt from the IZ program if there is no new gross floor area proposed to be added to the building. This exemption is typically thought of in the context of an office building being converted to a residential building, but the exemption applies to any non-residential use converted to a residential use (“conversion”), such as hotels, institutional buildings and warehouses.

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

<sup>2</sup> The Zoning Commission set down the first phase of IZ-XL on January 28, 2021 under Case No. 21-02.

In 2006, when the IZ program was adopted, there was a concern that applying an IZ requirement to such conversions could disincentivize conversion to residential use and result in less housing being produced overall. Many office buildings are already built to their maximum permitted building envelope either by zoning or the Height Act leaving no or limited capacity for IZ-related bonus density.

When a building in non-residential use that is not built to its maximum envelope is converted to residential use, the existing IZ requirements apply to the whole building when there are 10 or more dwelling units and when the building either utilizes the IZ-related bonus density or increases the existing gross floor area by 50 percent or more. When there is no increase in existing gross floor area of 50 percent or more and no use of bonus density, the IZ requirements would only apply to the new floor area of the building.

The following table summarizes the existing regulations and the change in how IZ would be applied to a conversion from non-residential to residential use under the proposed text amendment.

<b>Non-residential building converts to Residential use</b>	<b>Uses IZ-related Bonus Density</b>	<b>IZ Applies?</b>	<b>Proposed Text Amendment Application</b>
Less than 10 units	Not available	No	No
10 units or more; no addition	No	No	Whole building
10 or more units that result from addition of less than 50% of existing gfa	No	New gfa only	Whole building
	Yes	Whole building	Whole building
10 or more units that result from addition of 50% or more of existing gfa	No	Whole building	Whole building
	Yes	Whole building	Whole building

As summarized in the table above, this proposed text amendment will apply IZ to conversions regardless of whether the existing building envelope is enlarged or retained. The conversion must be located in a zone where IZ already applies,<sup>3</sup> and result in ten or more dwelling units at the time of the building permit. All other requirements of the IZ program would apply to a conversion, including the existing set-aside requirements and the use of bonus density.

Existing buildings that already contain dwelling units and propose ten or more new dwelling units at the time of a building permit would continue to be subject to the existing regulations under Subtitle C § 1001.4 that govern the applicability of IZ when an existing building is enlarged.

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

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<sup>3</sup> As stated in OP’s IZ-XL Phase 1 set down report under Z.C. Case No. 21-02, the feasibility of applying the IZ program to D zones will be evaluated in late spring 2021.

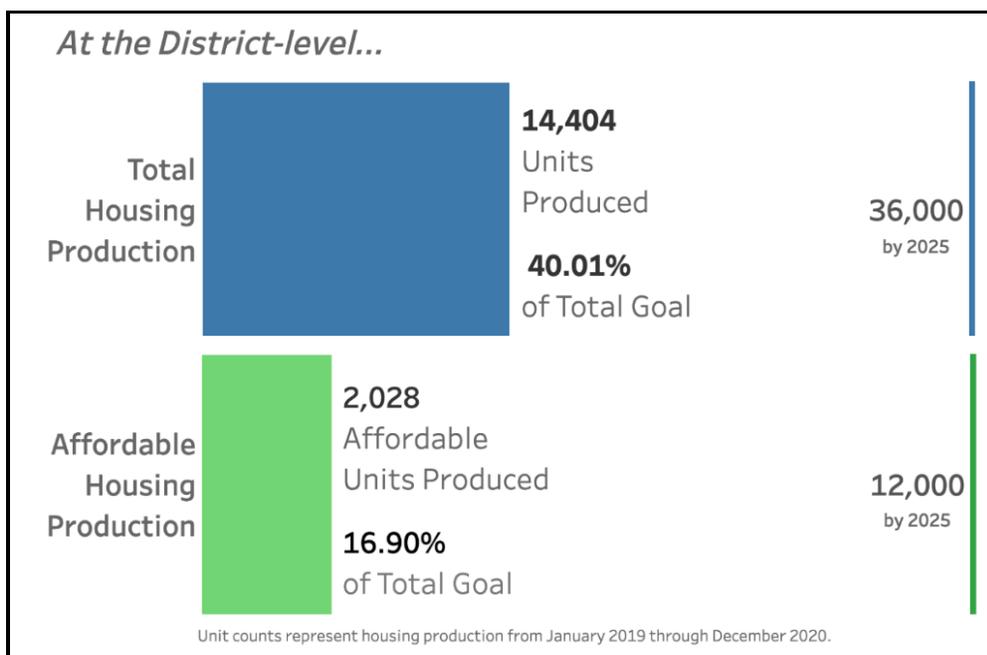
In addition to the IZ analysis, OP is analyzing the conditions that support conversion of commercial properties (including office and hotel) to housing. Commercial to residential conversions represent an opportunity to create both market rate and affordable housing units. The analysis will explore if there are functional differences between a normal redevelopment of existing uses that already trigger IZ requirements and bonus density, and conversions including:

- **Office Conversion:** which retain an existing office building and reuses its superstructure to create housing through rehabilitation of the building.
- **Hotel Conversion:** which retain an existing hotel building and reuses it to create housing. This approach is physically the most straightforward and time- and cost-effective since hotels are designed in a manner that readily accommodates residential uses, including through features such as floor plates, window and plumbing configuration, and hallway loading/light penetration.

### III. PLANNING CONTEXT

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. 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 graphic below illustrates the need for additional affordable housing to meet the goal of 12,000 units by 2025. Between January 2019 and December 2020, 14,404 new housing units were produced, which represented 40 percent of the total goal to produce 36,000 housing units by 2025. During this same time period, only 2,028 of the total housing units produced were affordable, which represented approximately 17 percent of the total goal to produce 12,000 affordable units by 2025.



Source: DMPED

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. The Housing Equity Report identified areas of the District that have a shortage of dedicated affordable housing and set production goals by area for additional affordable housing units.

The current Comprehensive Plan includes language supporting affordable housing opportunities:

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

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

Policy H-1.2.2: Production Targets

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

Policy H-1.2.3: Mixed Income Housing

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

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

The Office of Planning recommends the case be set down for a public hearing.

## APPENDIX I – PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations<sup>4</sup> are as follows (text to be deleted is marked in bold and strikethrough text; new text is shown in bold and underline text):

### I. Proposed Amendment to Subtitle C, GENERAL RULES

**Subsections 1001.2, 1001.3, and 1001.4 of § 1001, APPLICABILITY, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1001.2 Except as provided in Subtitle C § 1001.5, the requirements of this chapter shall apply to, and the modifications to certain development standards and bonus density of this chapter shall be available to, developments in zones in which this chapter is identified as applicable as specified in the individual subtitles of this title; provided the development falls into one of the following categories:

- (a) A “Mandatory Inclusionary Development” – a development that meets one or more of the following criteria:
  - (1) Is proposing new gross floor area beyond that existing at the time of the building permit application that would result in ten (10) or more new dwelling units, including dwelling units located in a cellar or penthouse;
  - (2) Will have ten (10) or more new dwelling units constructed concurrently or in phases, on a lot, on contiguous lots, or on lots divided by an alley, if such lots were under common ownership, control, or affiliation within one (1) year prior to the application for the first building permit;
  - (3) Notwithstanding subparagraphs (1) and (2) of this paragraph 1001.2(a), is proposing a change in use that results in ten (10) or more dwelling units, including dwelling units located in a cellar or penthouse;**
  - ~~(3)~~**(4)** Consists of a residential building that has penthouse habitable space pursuant to Subtitle C § 1500.11; or
  - ~~(4)~~**(5)** An “IZ Plus Inclusionary Development” – a development located on property that was the subject of a map amendment that increased the allowable FAR pursuant to Subtitle X § 502 and as indicated with an “IZ+” on the Zoning Map and that meets one of the categories of subparagraphs (1) through ~~(3)~~**(4)** of this paragraph 1001.2(a); or

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<sup>4</sup> The following text incorporates the amendments adopted by the Notice of Final Rulemaking in ZC Case No. 20-02. Most of the following provisions is subject to proposed amendments in Z.C. Case Nos. 14-13E, 19-27, 19-27A, and 19-27B. Upon final action in these cases, these proposed amendments will be updated to reflect the new text.

- (b) A “Voluntary Inclusionary Development” – any single household dwelling, row dwelling, flat, or multiple dwelling development not described in Subtitle C § 1001.2(a) if the owner voluntarily agrees to comply with the requirements of Subtitle C, Chapter 10, provided:

...

1001.3 If more than one (1) building permit is issued for a development, 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 building permits issued for the development within a three (3)-year period, starting from the issuance of the first building permit for the development.

1001.4 For existing buildings that become subject to the requirements of this chapter pursuant to Subtitle C § 1001.2, **except for Subtitle C § 1001.2(a)(3)**, the requirements of Subtitle C §§ 1003.1 through 1003.4 and the available modifications to applicable development standards shall apply:

- (a) To both the existing and new gross floor area if the new gross floor area:
  - (1) Utilizes the bonus density provided by Subtitle C § 1002; or
  - (2) Results in an increase of fifty percent (50%) or more in the building’s existing gross floor area; and
- (b) To only the new gross floor area if it:
  - (1) Does not utilize the bonus density provided by Subtitle C § 1002; and
  - (2) Does not result in an increase of fifty percent (50%) or more in the building’s existing gross floor area.