THE FOLLOWING DOCUMENT REPRESENTS A CONSOLIDATED VERSION OF TITLE 11 DCMR CHAPTER 26 INCLUSIONARY ZONING

THE DOCUMENT HAS BEEN COMPILED BY THE DC OFFICE OF PLANNING AND DOES NOT REPRESENT OFFICIAL ZONING TEXT

IT INCLUDES THE FOLLOWING FINAL ORDERS OF THE DC ZONING COMMISSION

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CHAPTER 26 INCLUSIONARY ZONING

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2600 GENERAL PROVISIONS

2600.1 This chapter establishes an Inclusionary Zoning Program that furthers the Housing Element of the Comprehensive Plan by increasing the amount and expanding the geographic distribution of adequate, affordable housing available to current and future residents.

2600.2 It is the intent of the Zoning Commission to promulgate only such regulations as are necessary to establish the minimum obligations of property owners applying for building permits or certificates of occupancy under an Inclusionary Zoning Program. All other aspects of the program, including the setting of maximum purchase prices and rents, the minimum size of the units, the selection and obligations of eligible households, and the establishment of enforcement mechanisms such as covenants and certifications shall be as determined by the Council and Mayor of the District of Columbia.

2600.3 The most important general purposes of the Inclusionary Zoning Program include the following:

(a) To utilize the skills and abilities of private developers to produce quality affordable housing;

(b) To leverage private development, combined where appropriate with zoning density increases, to produce affordable housing throughout the District of Columbia;

(c) To mitigate the impact of market-rate residential development on the availability and cost of housing available and affordable to low and moderate-income households;

(d) To increase the production of affordable housing units throughout the District to meet existing and anticipated housing and employment needs;

(e) To provide for a full range of housing choices throughout the District for households of all incomes, sizes, and ages to preserve diversity and to ensure the benefits of economic integration for the residents of the District;

(f) To stabilize the overall burden of housing costs on low and moderate-income households;

(g) To create a stock of housing that will be affordable to low and moderate-income residents over a long term; and

(h) To make homeownership opportunities available to low and moderate-income residents.

2601 DEFINTIONS

2601.1 When used in the chapter, the following terms and phrases shall have the meanings ascribed:

The Act – the Inclusionary Zoning Implementation Amendment Act of 2006, effective Mar. 14, 2007 (D.C. Law 16-275; 54 DCR 880). References to the Act include any Mayor's Order, agency rule, or other administrative issuance promulgated pursuant to that legislation.

Development, inclusionary– a development subject to the provisions of this chapter pursuant to § 2602.1.

Development, off-site – a development that accounts for all or part of an inclusionary development's requirements under this chapter if approved pursuant to § 2607.

Eligible household – one or more persons certified by the Mayor as being a low or moderate-income household pursuant to the Act.

Inclusionary unit – a unit set aside for sale or rental to eligible low and moderate-income households as required by this chapter or by order of the Board of Zoning Adjustment pursuant to § 2607.

Low-income household – a household of one or more individuals with a total annual income adjusted for household size equal to less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

Mayor – the Mayor of the District of Columbia, the Director of the agency or agencies delegated the authority to implement the Act, or the agency official or officials re-delegated such authority.

Moderate-income household - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-one percent (51%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

Purchase\rental schedule -the most current schedule, published by the Mayor pursuant to the Act, establishing the maximum purchase prices and rents for inclusionary units.

2602 APPLICABILITY

2602.1 Except as provided in 2602.3, the requirements and incentives of this chapter shall apply to developments that:

(a) Are mapped within the R-2 through R-5-D, C-1 through C-3-C, CR, SP, or W-1 through W-3 zone districts, unless exempted pursuant to § 2602.3; and

(b) Have ten (10) or more dwelling units (including off-site inclusionary units); and

(c) Are either:

(i) New multiple-dwellings;

(ii) New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or

(iii) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more.

2602.2 A new development with less than ten (10) dwelling units shall be become subject to this chapter upon the filing of an application for a building permit to add one or more dwelling units to the development within a two year period after the issuance of the last certificate of occupancy, if the construction for which application has been filed would result in the development having ten (10) or more dwelling units.

2602.3 This Chapter shall not apply to:

(a) Hotels, motels, inns, or dormitories;

(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;

(d) Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments, or developments in R-1, R-2 and C-4 Districts.

(e) Properties located in any of the following areas:

(i) The Downtown Development or Southeast Federal Center Overlay Districts;

(ii) All properties located within The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South receiving zones On February 12, 2007;

(iii) The W-2 zoned portions of the Georgetown Historic District;

(iv) The R-3 zoned portions of the Anacostia Historic District; and

(v) The C-2-A zoned portion of the Naval Observatory Precinct Districts; and

(vi) The Eighth Street Overlay.

2602.4 Except as provided in §§ 2602.5, 2003.5 and 2607.1 (c), or the Act, all inclusionary units created pursuant to this chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists.

2602.5 An owner\occupant of an inclusionary unit may not sell the unit at a price greater than that established by the Mayor pursuant to § 103 of the Act, unless the price is offered by the Mayor or a Housing Trust authorized by the Mayor.

2602.6 No eligible household shall be offered an inclusionary unit for rental or sale at an amount greater than that established by the Mayor pursuant to § 103 of the Act.

2603 SET-ASIDE REQUIREMENTS

2603.1 An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B zone district or in a C-1, C-2-A, W-0 or W-1 zone district shall devote the greater of 10% of the gross floor area being devoted to residential use or 75% of the bonus density being utilized for inclusionary units.

2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, SP, W-2 or W-3 zone district shall devote the greater of 8% of the gross floor area being devoted to residential use or 50% of the bonus density utilized for inclusionary units.

2603.3 Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, W-0 and W-1 shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households. The first Inclusionary unit and each additional odd number unit shall be set aside for low-income households.

2603.4 Developments located in CR, C-2-B through C-3-C, W-2 through W-3, and SP zone districts shall set aside 100% of inclusionary units for eligible moderate-income households.

2603.5 The Mayor or the District of Columbia Housing Authority shall have the right to purchase up to twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.

2604 BONUS DENSITY

2604.1 Inclusionary developments subject to the provisions of this chapter may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §6-601.01, *et seq.* (2001 Ed.).

2604.2 Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the 20% bonus density:

Base Zone	Matter of Right Zoning Constraints: Lot Occupancy	Zoning Height (feet)	Zoning FAR	IZ Zoning Modifications: Lot Occupancy	Height (feet)
CR	75%	90	6.00	80%	100
C-2-A	60%	50	2.50	75%	50
C-2-B	80%	65	3.50	80%	70
C-2-C	80%	90	6.00	90%	90
C-3-A	75%	65	4.00	80%	65
W-1	80%	40	2.50	80%	50
W-2	75%	60	4.00	75%	80
W-3	75%	90	6.00	80%	100
SP-1	80%	65	4.00	80%	70
SP-2	80%	90	6.00	90%	90

2604.3 Inclusionary developments in R-2 through R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

Base Zone	IZ Zoning Modifications: IZ Min. Lot Area (square feet)	Min. Lot Width (feet)	Min. Lot Width (feet) Special Exception
R-2 Detached	3,200	40	32
R-2 Semi-Detached	2,500	30	25
R-3	1,600	20	16
R-4	1,500	18	16

2605 DEVELOPMENT STANDARDS

2605.1 A development that provides, pursuant to federal or other District housing programs, affordable dwelling units for sale or lease may count such units towards the requirements of this chapter provided that all provisions of this chapter and the Act are met.

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.

2605.3 All inclusionary units shall be comparable in exterior design, materials, and finish to the market-rate units.

2605.4 The interior amenities of inclusionary units such as finishes and appliances shall be comparable to the market-rate units, but may be of less expensive materials and appliances.

2605.5 All inclusionary units in an inclusionary development shall be constructed prior to or concurrently with the construction of market-rate units, except that in a phased development the inclusionary units shall be constructed at a pace that is proportional with the construction of the market-rate units.

2605.6 Inclusionary units shall not be overly concentrated on any floor of a project.

2606 EXEMPTION FROM COMPLIANCE

2606.1 The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) would deny the applicant economically viable use of its land.

2606.2 No application for a variance from requirement of § 2603.2 may be granted until the Board of Zoning Adjustment has voted to deny an application for relief pursuant to this section or § 2607.

2606.3 Applicants for relief under § 2606.1 (b) shall include with their application the written order that imposed the relevant development restriction and shall certify that the restriction was not in the original plans submitted by the applicant to the agency, but was either offered in response to the agency's concerns expressed on the record or was unilaterally imposed by the agency.

2607 OFF-SITE COMPLIANCE

2607.1 The Board of Zoning Adjustment is authorized to permit some or all of the set aside requirements of § 2603 to be constructed off-site upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

(a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households;

(b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households; or

(c) For a rental development whose owner wishes to change the property's use to one listed in § 2602.3, proof that continuation of the rental use is no longer economically feasible.

2607.2 An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:

(a) Is located within the same census tract as the inclusionary development;

(b) Consists of new construction for which no certificate of occupancy has been issued;

(c) Is at a location suitable for residential development;

(d) Has complied with or will comply with all on-site requirements of this chapter as are applicable to it;

(e) Has not received any development subsidies from federal or District government programs established to provide affordable housing; and

(f) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site;

(g) Will not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the BZA application; and

(h) Has not utilized bonus density beyond that provided by § 2604.1

2607.3 The requirement of 2607.2 (a) may be waived upon a showing that the off-site development is owned by the Applicant, is located in the District of Columbia, and meets the requirements of § 2607.2.

2607.4 Inclusionary units constructed off-site shall not be counted toward any set aside requirement separately applicable to the off-site development pursuant to § 2603.

2607.5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the off-site property, shall be attached to an application for relief under this section.

2607.6 The covenant shall bind the owner and all future owners of the off-site development to:

(a) Construct and reserve the number of inclusionary units allowed to be accounted for off-site. in accordance with the plans approved by the Board and the conditions of the Board's order;

(b) Sell or rent, as applicable, such units in accordance with the provisions of this chapter and the Act for so long as the off-site development remains in existence;

(c) Neither apply for nor accept any development subsidies from federal or District government programs established to provide affordable housing;

(d) Acknowledged that the owners are legally responsible for the set-aside requirement accepted as if the requirement had been imposed directly on the off-site development; and

(e) Not request special exception or variance relief with respect to the obligations accepted, or its own obligations under this chapter.

2607.7 Upon the recordation of the covenant, the set-aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this chapter and the Act.

2607.8 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.

2608 APPLICABILITY DATE

2608.1 The provisions of §§ 2600 through 2607 this chapter as adopted by Zoning Commission Orders 04-33, 04-33A, and 04-33B and all amendments made by Orders No. 04-33A and 04-33B to 11 DCMR Chapters 1, 11 through 14, 15, 16, and 19 shall become effective following the issuance of the first purchase/rental schedule.

2608.2 The provisions of this Chapter shall not apply to any building approved by the Zoning commission pursuant to Chapter 24 if the approved application was set down for hearing prior to the effective date of this subsection.