

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: *JLS for*
Eric Shaw, Director

DATE: July 3, 2015

SUBJECT: ZC 04-33G Inclusionary Zoning Amendments

I. SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends the Zoning Commission set down for public hearing several amendments and options to Chapter 26, Inclusionary Zoning. The amendments and options do not necessarily represent OP's final recommendations rather it is the intent to receive comment through the public hearing process for consideration in formulating the final recommendations.

OP recommends that the following be advertised for public hearing:

1. Text amendments as proposed by the Coalition for Smarter Growth, et al (the "Petitioner"), Exhibit 2 of the case record, however OP has many concerns as briefly discussed below;
2. Alternative text proposed by OP, Attachment of this report.

The Petitioners' Amendments

On February 2, 2015 a petition was submitted to the Zoning Commission, filed by the Coalition for Smarter Growth et al, to amend Chapter 26, Inclusionary Zoning in several ways:

- Apply the Inclusionary Zoning regulations (IZ) to developments in both the Downtown Development and Southeast Federal Center overlay districts after December 31, 2017 (*In conversations with the petitioner, they stated they purposefully omitted the receiving areas for Transferable Development Rights from those areas where IZ would apply after 2017*);
- Increase the required minimum percentage of residential square footage set aside for targeted households from the current eight and ten percent (8% and 10%) to twelve percent (12%)
- Increase the maximum requirement for the denser zones from fifty percent (50%) of bonus density to seventy-five percent (75%) of bonus density;
- In rental projects, target households at or below fifty percent (50%) of the Medium Family Income (MFI)¹
- In for-sale projects, target households at or below seventy percent (70%) of MFI;

¹ US Department of Housing and Urban Development (HUD) uses the term Median Family Income (MFI) and not Area Median Income (AMI); Any text amendments will reflect the change in terminology from AMI to MFI.

- Specify that the Mayor or the DC Housing Authority shall have the right to purchase units for the purpose of leasing units, but only to low and very low income households.
- Increase the set aside requirement in the Saint Elizabeth's districts from eight percent (8%) to ten percent (10%) of gross floor area.
- Increase the permitted bonus density from twenty percent (20%) to twenty-two percent (22%).
- Remove all lot occupancy restrictions for all IZ projects in zones controlled by Floor Area Ratio (FAR) restrictions.
- Further reduce the permitted lot widths as a special exception in the R-2 through R-4 zones.

While some of the applicant's proposed amendments are similar to those proposed by OP they go significantly beyond what OP has proposed in the alternative. OP has several major concerns regarding the applicant's proposals:

The impact on development economics may retard development and result in a shortage of new housing supply sufficient to meet the current significant demand for market rate housing in the city. This may drive up the cost of existing supply and reduce affordability as new households shift their search for housing from new to existing supply.

With regards to St. Elizabeths district, the IZ requirements was thoroughly discussed and established with the creation of the StE zones which just became effective in 2013. The bonus density and set asides were designed into the maximum FAR as adopted. OP does not support changing these standards.

Through case 08-06A, the Zoning Regulations Review (ZRR) process, OP and the Zoning Commission considered removing lot occupancy requirements but the decision was made to retain lot occupancy controls due to concerns over neighborhood character, light and air and others. The existing lot occupancies for IZ developments were established after reviewing the building capacity and ability of a site to use the bonus density.

The proposed increases in height in combination with the proposed increase in density to twenty-two percent may start to create conflicts with the Comprehensive Plan in some zones, depending on where they are mapped, and do not consider pending changes to the penthouse regulations. For instance, increasing the height in the W-2 zone 60 feet to 90 feet and increasing the density from 4.0 to 4.88 as a matter of right with IZ may create a conflict where the W-2 is mapped in areas designated as Medium Density by the Comprehensive Plan Future Land Use Map.

The Office of Planning Alternative Amendments

The Office of Planning proposes changes to Chapter 26. OP is interested in getting comments relative to changing Section 2603.2 (Set-aside Requirements)

Recommendation 1

Option 1A: Move the C-2-B, C-3-A, SP-1 and W-2 zone districts from § 2603.4 to § 2603.3 thus half of the IZ units will be targeted to households at 50 percent of the MFI.

Inclusionary Zoning is predominantly producing units for small households at 80 percent MFI, which is close to market and very few units are reaching lower income households. The proposed amendment would increase the number of projects that will serve households at 50 percent of the MFI. Option 1A does not distinguish between rental or for sale tenure.

The variations in IZ requirements summarized in Table 1 were originally based on three factors.

- The change in construction methods between “stick built” construction and steel and concrete had an impact on the affordability that could be achieved given the same bonus density.
- The requirements therefore varied by which construction method would be needed to maximize density within a given zone. In essence, in zones with heights of 60 feet and more it was necessary to use steel and concrete to maximize their zoning envelop, even before the bonus density.
- The requirements varied based on whether a zone was residential or commercial-mixed use due to the competition for land residential uses would face from non-residential uses. OP chose to theoretically assist residential land values in zones where it would need to compete for land with office, hotel and other non-residential uses.

Since IZ was first introduced, changes in “stick built” construction methods have enabled residential developments to go from four or five stories to six and above when a concrete plinth is used. This is enabling developments in zones that permit heights of 75 feet to use the less expensive “stick” construction to achieve the full height where previously they would have needed steel and concrete. OP is therefore recommending that the requirement stay at the greater of eight percent of the residential use or 50 percent of the bonus density, but developments in these zones be required to split their requirement to units set aside at both 50 percent and 80 percent of the MFI.

Option 1B: As an alternative option OP recommends that targeted rental households be consolidated from 50% and 80% of the Medium Family Income (MFI) to a single target of sixty percent (60%) of the MFI, and for-sale IZ units to 80% of the MFI (§ 2603.3).

The Option 1B alternative simplifies the program administration and potentially reduces conflicts with subsidized affordable projects. Splitting the requirements by tenure also:

- Recognizes that the gap between the cost of housing and what households can pay becomes significant at different household incomes for different tenures;
- Aligns IZ targets to where those gaps between supply and demand grows more significant (ex. 60 percent of MFI for rental instead of 80 percent, see Table 7); and
- Targets for sale units to households who can more easily qualify for mortgages, while still allowing for homeownership at lower income households through the District's purchaser subsidies.

OP notes that this may have different impacts on the economics of rental and for-sale housing and is therefore particularly interested in hearing from developers on the issue.

Prior to making a final recommendation OP will work with developers to refine the analysis and how changes to the purchase/rent schedule and proposed Options 1A and 1B may affect development. OP will present additional analysis and recommendations on the percentage requirement or changes to bonus density in OP's final report. Additional detailed discussion is provided on page 14 of this report.

Based on OP's preliminary analysis of the impacts, OP is not recommending any changes to the percent of square feet required or the relationship to the bonus density.

Recommendation 2 - Fewer For-Sale Units at Deeper MFI (§ 2603)

Provide flexibility for a developer to provide fewer for-sale units at 60% MFI instead of more units at 80% MFI.

This flexibility would incentivize developers to respond to local market conditions in neighborhoods where the price of existing market rate units affects the demand for price restricted IZ units.

Recommendation 3 - Enabling Voluntary Compliance (§ 2602.1 (d))

Provide for voluntary participation in the IZ program where it would not otherwise be required.

At the request of the Zoning Commission, OP is providing proposed language in §2602.1 (d) which will permit projects that either have fewer than 10 new units or are less than a 50 percent expansion within the IZ applicable zones to access the bonus density provided they set aside the required square footage for the target households. This would permit projects in zones where IZ is applicable to proceed on a voluntary basis unless they are in zones where the bonus density was determined to be incompatible with the neighborhood character.

This is a result of a market rate project that applied to the BZA to participate in the IZ program in order to access the bonus density. Another project has inquired on applying IZ to the first phase of a project where it might not have been triggered in order to access bonus density for both the first and second phase. Such requests to opt-in to the IZ program suggest that the bonus density compensates for the affordability requirements under certain circumstances.

The ability to opt in to IZ would result in an increase in units and would maximize the potential production of the program. The existing limits on increased height and density in those areas where it has been determined the changes to the permitted building envelope are not appropriate with the historic characteristics or federal security issues of a neighborhood, such as the 8th Street overlay and Historic Anacostia would still apply.

Recommendation 4 - Occupancy and Administrative Flexibility (§§ 2600.2 and 2606.3)

Permit flexibility in occupancy by allowing units that have remained unoccupied for an extended period of time; or when increases in fees make units either unaffordable to target household or have a significant negative impacts on the Maximum Resale Price.

The amendments would permit a unit to be sold to households with higher incomes who can afford the increased condo fees provided the price controls remain, or to sell at market with net proceeds above the control price to be deposited into the District's Housing Production Trust Fund. This would require amendments to the Administrative Regulations as well.

The amendments to § 2600.2 and § 2606.3 are intended to empower administrative regulations and policies that address two types of situations. First, when DHCD and the developer have exhausted all marketing opportunities and an IZ unit is still not occupied and second, when ownership fees rise to such a degree as to threaten the affordability of the IZ unit.

Many IZ programs across the country permit a long vacant IZ unit to be rented or sold to households with higher incomes bounded by some upper limit provided the rent or sales price remains affordable to the originally targeted households. This helps to ensure occupancy and to reduce the probability of vacant units. OP recommends the upper limits permitted to ensure occupancy be set at 80 percent MFI for IZ units originally targeted to 50 percent of the MFI and 100 percent MFI for those originally targeted for 80 percent of the MFI.

Similarly, new § 2606.3 is recommended when rising condominium and homeowner fees have the potential to threaten the affordability of IZ units. Increasing fees may be due to a variety of legitimate reasons that are beyond the control of the Eligible Household owning the unit. Typically they are due to the owners association voting to add an amenity or fix a problem. IZ programs across the country struggle with appropriate responses to this problem. It has yet to threaten an IZ unit mainly because the oldest for-sale unit is only two years old, and the District's IZ pricing assumptions create buffer of affordability that helps to reduce the risk to affordability from rising condo fees. DHCD has been contacted by several owners of Affordable Dwelling Units (ADU) created either by the disposition of public lands or through a planned unit development prior to IZ who have had problems with increasing condominium fees. ADUs' often do not have the same pricing precautions as IZ to reduce the risk of fees threatening the units' affordability. As a result, DHCD have developed a policy on how to address these problems.

OP's proposed § 2606.3 essentially applies DHCD's ADU policy to IZ units. It would permit, via a consent calendar of the Zoning Commission, an Eligible Household owning an IZ unit where the fees have become excessive to either sell the unit at the Maximum Resale Price (MRP) established by DHCD to a household earning up to 100 percent of the MFI, or sell the unit at market price with

any net proceeds above the MRP being deposited to the District's Housing Production Trust Fund (HPTF). Due to the nature of the applicant, OP also recommends that § 3040.6 be added so that no fee will be charged for an application.

Recommendation 5 – Expand Mayor's Right to Purchase (§ 2603.5)

Allow the Mayor to purchase a minimum of one unit and up to any amount agreed upon with the developer.

Section § 2603.5 of the current regulations limits the Mayor to purchasing no more than 25 percent of IZ units. The proposed amendment would allow the purchase of at least one unit and more if agreed to by the developer, which creates greater flexibility toward reaching low income households and enables the Mayor to intervene on units that have experienced marketing difficulties.

Recommendation 6 – Administrative Off-site Flexibility (§2607)

Offer an administratively handled matter of right off-site provision within 2,640 feet (one half mile) of the on-site requirement provided it results in 20% more square feet set-aside for IZ units.

Off-site provision is often an element of IZ programs around the country and usually requires the units be located within a defined distance of the property. During the meetings held by the District's Comprehensive Housing Strategy Task Force, stakeholder's participating the regulatory sub-committee raised the concept that a central purpose of IZ is to "preserve diversity and to ensure the benefits of economic integration for the residents of the District;" (§ 2600.3 (e)). Stakeholder's suggested that this purpose is still accomplished when the units are created at the neighborhood level and proposed that off-site compliance within the same neighborhood could be achieved with the proper covenants and enforcement provisions at the administrative level thereby relieving a developer of the need to apply to the Board of Zoning Adjustment (BZA).

Additionally, Studies suggest that the main social value of IZ programs stem from maintaining diverse neighborhoods, the change enables the potential to leverage greater affordability, and BZA approval for sites farther than a half mile would still be required.

OP will continue to research and refine this proposal including the need for a potential escrow of funds similar to that required by the Downtown Development Overlay District's (DD) combined lot regulation.

Recommendation 7- Technical Corrections, Clarifications and Updates (various sections)

- Change the terminology from "Area Median Income" (AMI) to "Median Family Income" (MFI)
- Provide greater clarity on requirement calculations, bedroom, and pricing;
- Improve administration, monitoring, and enforcement.
- Fix minor errors and omissions.

OP worked with Zoning Administrator (ZA) and DHCD to review where there are gaps in the regulations that make administration of the program difficult. This section covers that category of recommend amendments.

Definitions:

Bedroom - OP recommends adding a definition to the zoning regulations based on a review of approved IZ projects to date. There has been a growing administrative problem with the intended proportion and pricing of units by the number of bedrooms. A growing trend in new market rate developments, which is permitted by the building code are “sleeping rooms” that do not have windows with immediate access to natural light and air. The building code permits a sleeping room so long as it has an opening of a certain size to a room that does have a window with immediate access to natural light and air. DHCD has forwarded to OP that this is contrary to HUD affordable housing standards of quality, which states for illumination and air quality, sleeping rooms must have at least one window.

While not universal, provision of a closet is also a common requirement. This definition provides DCRA’s Zoning Administrator clarity regarding the application of proportionality of unit types. For instance, if there are no market rate 2-bedroom units that meet this definition then the developer need not provide an IZ unit that meets this definition. The definition also provides DHCD clarity for pricing the units. For these reasons, OP recommends the IZ program adopt this definition.

The following amendments are at the request of DCRA’s Zoning Administrator to provide greater clarity within the regulations as a direct response to the diversity of projects that have applied for IZ certification with the building permit application process.

Eligible Household and Median Family Income have been proposed in the alternative as Option 1B to work with the language that would split IZ requirements by building tenure.

§ 2602.1 (b & c) Strengthens the applicability language at the request of the ZA due to several row house projects that avoided IZ requirements by filing for staggered permits under different Limited Liability Corporations (LLCs). It also clarifies when IZ applies to new construction and when IZ applies to existing construction.

The intent of the language is to require that IZ requirements apply to all new construction whether it is a stand-alone development or if it is an addition to an existing development. If the addition is ten or more units and a 50 percent expansion than IZ not only applies to the new construction, but the requirement calculation must include the existing portion as well. **§ 2605.7** permits the IZ units to be concentrated in the new addition if the units in the existing construction are already occupied. Failure to add this would create a significant administrative burden on both the development owner and the mayor given the rights of existing tenants and unit owners.

§ 2602.2 was at the request of the ZA because there is no Certificate of Occupancy requirement for single-family dwellings so the ZA could not enforce IZ on a project that completed units within the two year because there was no administrative trigger.

§ 2603.1 & 2603.2 was requested by the ZA to address the growing number of projects that mix construction techniques between steel and concrete and wood frame “stick” construction. The goal is to clearly define when a project has an 8 percent requirement versus a 10 percent requirement. OP will be continuing to work the ZA and developers to refine this language for the final report. This amendment would permit a reduction of the IZ requirement for the entire building only when steel and concrete construction is used to frame more than 50 percent of the dwelling units.

§ 2603.8 addresses projects that have argued square footage that is not counted toward gross floor area such as projections and cellars could still count toward meeting the IZ requirement. This amendment clarifies that should the development owner wish use that space toward meeting the requirement then all of that space goes toward calculating the requirement.

§ 2604.2 corrects the omission to Zoning Commission Case number 04-33B, which proposed adding 10 feet in height to the C-2-C zone district to enable projects within the zone to access the bonus density. OP set down the amendment in a report dated May 4, 2007; the amendment was advertised in the Notice of Public Hearing dated June 1, 2007 and deliberated on July 26, 2007 however it was omitted from the notices of proposed and final rule making.

OP demonstrated in the report dated September 26, 2006, that in the C-2-C along with other commercial mixed-use zones such as CR and SP-2 that the 10 feet in height was necessary to access the bonus density because expanding lot occupancy to 90 percent was not realistically achievable if new construction was to still meet light and air requirements for court yards. In addition, based on where the C-2-C zone is mapped, there is very limited interaction between the C-2-C and immediately adjacent low-density residential zones and the impact on shadows from increased height was negligible. Similarly, OP recommends deletion of the reference to the R-5-E in the table since R-5-E was exempted from IZ because for the same reason of lot occupancy and the inability to add height due to the Height Act of 1910.

§ 2604.4 is a result of the Zoning Administrator’s interpretation that variances granted by the Board of Zoning Adjustment to exceed the matter of right FAR permitted the zone is not considered bonus density for the purposes of calculating the IZ requirement. OP recommends the IZ regulations clarify this to maximize the program’s potential to deliver affordable units.

§ 2605.4 applies a standard common in other IZ programs across the country including Fulton County, GA and Santa Barbara, CA to ensure the IZ units meet an appropriate standard of quality.

§ 2605.6 is intended to clarify how units are distributed across a development. It is in direct response to larger developments that involve a mix of building types and tenures such as row houses and apartments and where a developer may wish to locate 50 percent of MFI units in the apartment building while locating only the 80 percent of MFI units in the row-house component. OP notes that the amendments to § 2603.3 proposed in the alternative may eliminate the need to amend § 2605.6.

§ 2605.7 See discussion of § 2602.1 (b and c).

§ 2602.3 (e) (3 and 4) Additional clarification is recommended to define the boundaries of the areas as they existed at the time of adoption. The initial intent was to recognize geographic areas that are

constrained from accommodating bonus density. However a map amendment to change a zone district within one of the historic districts could result in a property that was intended to be subject to IZ inadvertently being exempted from IZ.

- (3) The W-2 zoned portions of the Georgetown Historic District **in squares 1171, 1173, 1192, 1195, 1196, 1183, 1184, 1185, 1186, 1187, and 1200;**
- (4) The R-3 zoned portions of the Anacostia Historic District; in squares **5766, 5765, 5768, 5769, 5773, 5774, 5775, 5776, 5777, 5778, 5779, 5780, 5781, 5782, 5791, 5792, 5793, 5799, 5800, 5801, 5802 5803, and 5804;**

BACKGROUND AND DISCUSSION

From April, 2005 through December, 2006 the Zoning Commission held public hearings regarding the design and application of the District’s Inclusionary Zoning program resulting in Chapter 26 of DCMR Title 11 Zoning Regulations. During approximately the same time the Council of the District of Columbia held public hearings and passed the Inclusionary Zoning Implementation Act of 2006. The program sets aside units for households earning up to 50 percent of the MFI and/or up to 80 percent of the MFI. Table 1 below summarizes how the requirements vary by zone and construction type.

Table 1. Summary of IZ by Zone and Construction Type.

Density/Construction Type		Zoning Categories	
		Residential Zones (R-2 to R-5-D)	All Other Zones (C, CR, SP, & W)
Low Density Zones (R-2 to R-5-B, C-2-A, & W0-1) and (Stick Built Construction)	% of Units Required	Greater of 10% of the Residential FAR or 75% of the bonus density	Greater of 10% of the Residential FAR or 75% of the bonus density
	Target Households	Units set aside split evenly between 50% and 80% of MFI	Units set aside split evenly between 50% and 80% of MFI
Higher Density Zones (R-5-C & D, C-2-B to C-3-C, W-2 & 3, CR & SP) or (Steel & Concrete Construction)	% of Units Required	Greater of 8% of the Residential FAR or 50% of the bonus density	Greater of 8% of the Residential FAR or 50% of the bonus density
	Target Households	Units set aside split evenly between 50% and 80% of MFI	Units set aside for 80% MFI

The IZ program uses HUD’s MFI for the region to achieve maximum compatibility with other affordable housing programs, for which the MFI is the industry benchmark. OP strongly recommends IZ’s continued use of the region’s MFI to express the program’s target households for a variety of reasons. First, at the broadest policy level, housing is a necessity for the region’s workforce. Second, using the District’s MFI would create confusion and unnecessary administrative complexity with other programs because the relationship between the District’s and the region’s MFI changes over time as incomes change. Third, the IZ program’s target households are based on a gap analysis between actual District households and the cost of housing available in the District, they are only expressed in terms of the region’s MFI

Table 2 below presents the current 2015 household income limits based on a MFI of \$109,200 and how they change according to household size.

Table 2. 2015 Maximum Household Income Limits.

Household Size	Households at	
	50% MFI	80% MFI
1	\$ 38,220	\$ 61,152
2	\$ 43,680	\$ 69,888
3	\$ 49,140	\$ 78,624
4	\$ 54,600	\$ 87,360
5	\$ 60,060	\$ 96,096
6	\$ 65,520	\$ 104,832

Source: DHCD.

IZ became applicable to planned unit developments in March 2008 and to matter of right residential development in August of 2009. Since then there have been two major of amendments, the first case (04-33D) in 2011 exempted subsidized affordable housing from IZ administration provided the IZ equivalent was set aside to be governed by the subsidy’s controls for the life of the project. The second case (04-33F) in 2013 terminated the affordability requirements upon foreclosure by a first mortgagee or by assignment to the Federal Housing Administration (FHA). The 04-33F amendment was made to enable IZ purchasers’ access to FHA mortgage guarantee financing.

Program Production

Between the publishing of the IZ zoning regulations and the Act in 2006 and the administrative regulations and purchase price schedule in August 2009, a number of projects received predevelopment approvals that exempted them from IZ requirements. IZ production therefore started slowly as the District’s demand for housing worked through the projects exempt from Inclusionary Zoning. However, over the past three years IZ has applied to a growing number of projects. Tables 3 and 4 below show the number of projects and inclusionary units by fiscal year, zone districts and by targeted MFI.

Table 3. Certificates of Inclusionary Zoning Compliance Issued by Fiscal Year.

Fiscal Year	CIZCs	Units				
		Total	Market	Total IZ	50% MFI	80% MFI
2010	1	22	20	2	1	1
2011	2	272	215	57	1	56
2012	12	1,717	1,105	146	15	131
2013	17	1,115	649	104	25	79
2014	29	1,988	1,491	187	36	151
2015	20	1,439	782	129	35	94
Draft	11	1,145	722	142	30	112
Total	92	7,698	4,984	767	143	624

Notes: Fiscal years run October 1 to September 30. 2015 numbers are for the first two quarters (March 2015). Draft CIZCs are those received by DHCD but have not yet been approved by the Zoning Administrator.

Table 4. Certificates of Inclusionary Zoning Compliance Issued by Zone.

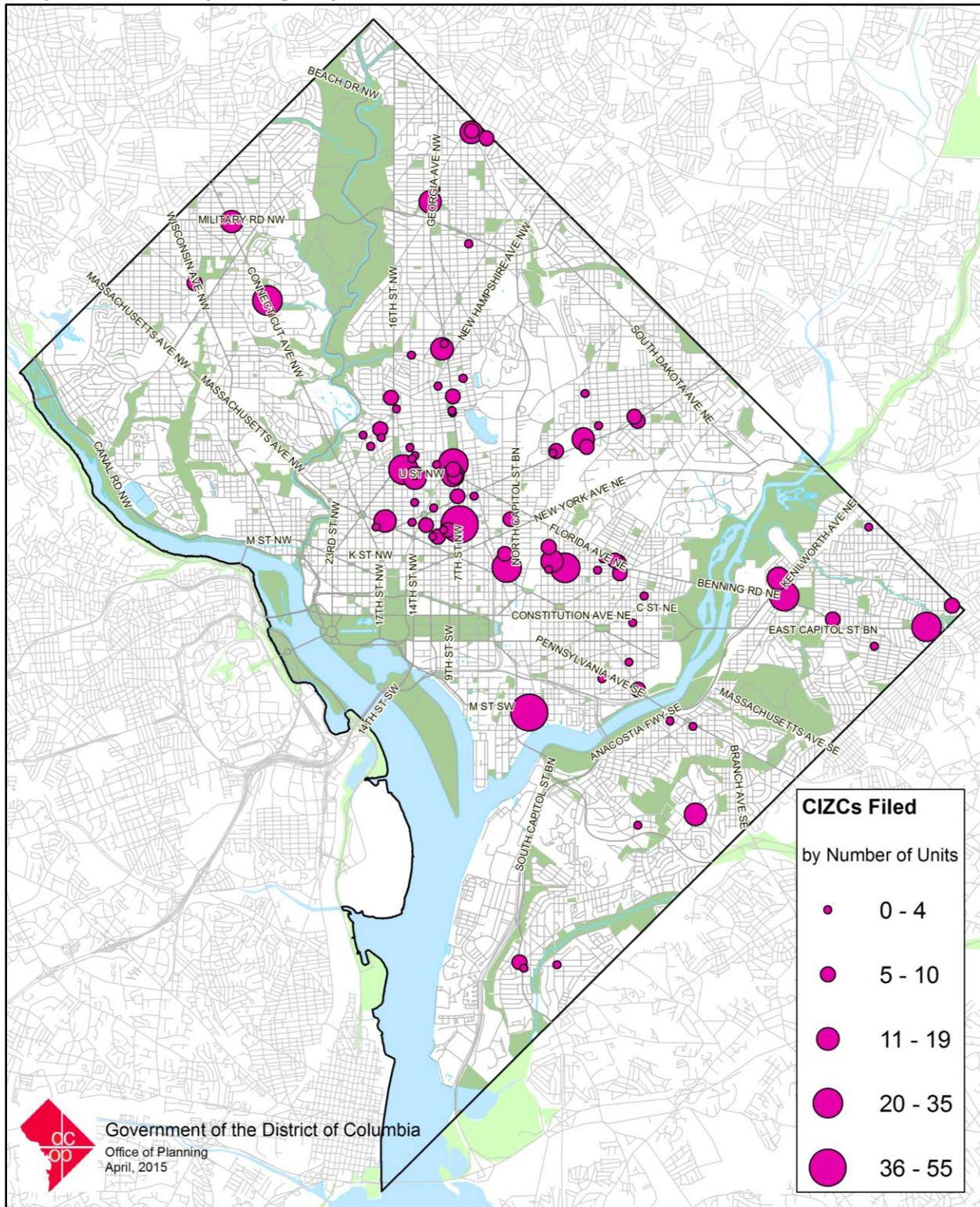
Zone	Projects	Total Units	Market	Subsidized Affordable	IZ Totals	50% MFI	80% MFI
C1	2	22	20	-	2	1	1
C2A	29	1,085	670	286	129	70	59
C2B	11	1,183	984	90	109	3	106
C2C	5	610	402	123	85	-	85
C3A	15	1,707	972	599	136	-	136
C3C	1	303	277	-	26	-	26
CR	4	855	750	-	105	-	105
R2	1	19	-	17	2	1	1
R3	1	12	11	-	1	1	-
R4	4	155	43	100	12	7	5
R5A	5	627	12	549	66	33	33
R5B	7	130	81	34	15	8	7
R5C	1	67	62	-	5	2	3
R5D	4	654	451	149	54	17	37
SP1	1	39	36	-	3	-	3
SP2	1	230	213	-	17	-	17
Totals	92	7,698	4,984	1,947	767	143	624

Source: Office of Planning, June, 2015.

Table 4 shows that even though the C-2-A district requires half of the required IZ units be set aside for 50 percent MFI and half for 80 percent MFI, it has the greatest number of projects; the most IZ units have been produced in the C-3-A district; and a significant amount of units most of which have been at 80 percent of MF, have been produced in the denser districts like C-2-B, C-2-C, and CR.

The 92 projects have provided an understanding of production and use of bonus density in a variety of neighborhoods throughout the District. Map 1 illustrates IZ projects by the number of IZ units in each project and the distribution of the projects throughout the District including high cost neighborhoods such as Connecticut Avenue and Dupont Circle Northwest.

Map of Inclusionary Zoning Projects



Source: DCHD database of issued CIZC, April 2015.

Rents and initial purchase prices for these IZ units follow the current pricing methodology established for the program as published by DHCD. The current methodology is essentially identical to the one used to establish the original balance between the affordability requirements and the bonus density. Table 5 below identifies estimates of rents and prices, varying by unit type and target incomes. The main assumption used to set the prices and rents is that monthly housing costs should not exceed 30 percent of income limit for the household assumed to be occupying the unit.

Table 5. 2015 Maximum Rent and Purchase Price Schedule²

Multi-Family Inclusionary Developments							
				50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	\$148	\$305	\$956	\$117,500	\$1,529	\$213,600
1	1.5	\$233	\$381	\$1,024	\$116,200	\$1,638	\$219,100
2	3	\$300	\$564	\$1,229	\$119,800	\$1,966	\$243,400
3	4.5	\$376	\$641	\$1,433	\$141,300	\$2,293	\$285,500
Single-Family Inclusionary Developments							
				50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Estimated Utility Allowance	Estimated Homeowner Assoc. Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	\$365	\$110	\$1,229	\$175,000	\$1,966	\$298,500
3	4.5	\$453	\$130	\$1,433	\$206,000	\$2,293	\$350,100
4	6	\$541	\$150	\$1,638	\$236,900	\$2,621	\$401,700

Source: DHCD.

IZ units both for sale and rent have become occupied. Not including the most recent projects to have issued Notices of Availability (NOA), DHCD has sold or has under contract approximately 11 out of 13 of the for-sale IZ units to eligible households, and approximately 60% of the rental units have been leased. DHCD is also amending the administrative regulations to improve the process of matching eligible households to available IZ units.

Household Income Limits Price and Rent Methodology

The IZ program currently uses 30 percent of the household income limits for those households assumed to be occupying a given unit to establish purchase prices and rents (see Table 5). Generally accepted housing policy since the 1980's recognizes a household budget is burdened when more than 30 percent of the household income is used for housing costs. Subsidy programs such as public housing or Housing Choice Vouchers set a goal of housing costs that do not exceed 30 percent of

² Based on OP's estimate of inputs; The 2014 Purchase Price Schedule with assumptions can be found in the attachments at the end of this report.

income. However, vouchers subsidize only up to the Fair Market Rents (FMR)³ which means a voucher holder may need to contribute more than 30 percent of their income toward housing cost if the unit's rent exceeds the FMR for that unit type. Rents for developments using Low Income Housing Tax Credits (LIHTC) or other programs do not exceed the 30 percent of the income limits, but frequently developers of these affordable housing projects also adjust the rents to market conditions to ensure occupancy and/or receive additional subsidies to fill gaps if rents are estimated to be significantly lower.

This was the methodology used to analyze the balance between the bonus and the affordability requirements when IZ was first introduced to the Zoning Commission. Based on feedback from completed rental projects, OP and DHCD will assess using 25 percent of the income limits for setting rents and adjust the assumed household sizes of larger two and three-bedroom units. In addition, several developers have indicated concern that the pricing for larger row house units result in prices that are too expensive for most households because most are smaller with lower incomes than those assumed by the price schedule. This affects their ability to afford the IZ sales prices and makes marketing of the units more difficult.

An adjustment in the pricing methodology is an administrative function and does not require an amendment to the zoning regulation. OP will work with developers to refine the analysis testing the impacts and make any recommended amendments as part of the final report.

Target Households by Rental or Ownership Tenure

Option 1B consolidates the targeted 50%/80% MFU split into a single 60 percent of MFI for rental and a single 80 percent of MFI for ownership developments. The proposed amendments also provide flexibility for developers of IZ ownership developments to target lower incomes and set aside fewer units if neighborhood conditions make marketing price controlled units difficult.

IZ's original design to split IZ affordability requirements between households earning 50 percent and 80 percent of the MFI stemmed from the original petition by the Campaign for Mandatory Inclusionary Zoning's (CMIZ) desire to serve the demand from lower income households. At the first hearings OP raised splitting affordability targets based on tenure with the Zoning Commission, but otherwise worked with the proposal to split affordability to the extent possible and focused a greater amount of analysis on the amount of gross square feet to be set aside. Since then, there are a number of reasons which suggest target households should be revisited and splits made by tenure.

1. At the broadest policy level rental and ownership housing tend to serve different income ranges.
2. The District's Comprehensive Housing Strategy *Bridges to Opportunity* concluded that the majority of the District's affordable housing resources should be for those earning 60 percent of the MFI and below.⁴

³ Fair Market Rents (FMR) are determined by HUD annually based on the 40th percentile of rents within a MSA.

⁴ *Bridges to Opportunity: A New Housing Strategy for D.C.*. Comprehensive Housing Strategy Task Force

3. A gap analysis between the cost of both rental and ownership market rate housing and District households' ability to pay, provided below suggest the gap starts to grow significantly below 60 percent of MFI for rental (see Table 7).
4. The vast majority of IZ production has been at the 80 percent of MFI level, which is not serving lower income households and is very close to available rental market supply especially for small units.

The sections below discuss some of these in greater details.

Household Differences by Tenure

Rental and ownership housing stock tend to serve different types of households. Nationally households that own their home tend to be of higher income than renters. In the District, the pattern is the same. DC households that rent tend to be smaller (1.9 persons) and lower income (Avg. \$64,383) households than households that own, which tend to be larger (2.2 people) and of higher incomes (Avg. \$157,593). Therefore, not only do gaps in supply tend to happen at different income levels between rental and ownership, but homeownership also requires households with sufficient resources to maintain a property should something go wrong. Since homeownership does convey several benefits to lower income households, the District places significant emphasis on achieving homeownership for low income households, but those programs such as the Home Purchase Assistance Program (HPAP) are typically available to households with higher incomes than most of rental subsidy programs.

In addition, OP has heard from several stakeholders that finding credit worthy potential home buyers at the 80 percent of MFI level is considerably easier than finding eligible households at the 50 percent of MFI level

Rental Rates and Supply

Table 6 below is table of potential household income targets and what they can afford in rent per square foot at both 30 percent and 25 percent of the income limits of assumed households.

Table 6. Draft 2015 Maximum IZ Rents per Square Foot

Affordability Definition		30% of Income Limit							
Unit Type	Unit Size	MFI							
		100%	90%	80%	70%	60%	50%		
Eff	500	\$ 3.66	\$ 3.28	\$ 2.90	\$ 2.52	\$ 2.13	\$ 1.75		
1	625	\$ 3.11	\$ 2.78	\$ 2.45	\$ 2.13	\$ 1.80	\$ 1.47		
2	900	\$ 2.58	\$ 2.31	\$ 2.04	\$ 1.76	\$ 1.49	\$ 1.22		
3	1,050	\$ 2.58	\$ 2.30	\$ 2.03	\$ 1.76	\$ 1.49	\$ 1.21		
Affordability Definition		25% of Income Limit							
Unit Type	Unit Size	MFI							
		100%	90%	80%	70%	60%	50%		
Eff	500	\$ 3.03	\$ 2.71	\$ 2.39	\$ 2.07	\$ 1.75	\$ 1.43		
1	625	\$ 2.56	\$ 2.29	\$ 2.02	\$ 1.74	\$ 1.47	\$ 1.20		
2	900	\$ 2.13	\$ 1.90	\$ 1.67	\$ 1.44	\$ 1.22	\$ 0.99		
3	1,050	\$ 2.12	\$ 1.90	\$ 1.67	\$ 1.44	\$ 1.21	\$ 0.99		

Notes: Assumed unit sizes from IZ Maximum Rent and Purchase Price Schedule. Rents per square foot are net of estimated utility allowances.

These numbers should be compared to the cost of existing housing supply and the type and size of units that are actually being built through Inclusionary Zoning. During the first quarter of calendar year 2015 rents in the District for Class A apartment buildings averaged \$3.02 while Class B buildings average \$2.46 per square foot.⁵ Class A rents varied across DC sub-markets from a low of \$2.54 to a high of \$3.31 per square foot and the average size was 816 square feet across all unit types. While Class B rents varied from a low of \$2.40 to a high of \$2.72 per square foot with an average size of 795 square feet across all unit types.

It is important to discuss several elements to these numbers. First, some newly constructed buildings in some neighborhoods are listing their units around \$4.00 per square foot and up. Second, smaller unit types tend toward an average higher rent per square foot. Third, Class B rents often include major utilities so actual rent net of the utilities is actually lower. Similarly, when utilities are added back in to the numbers in Table 6 above, the maximum allowable housing cost to a single person at 80 percent MFI occupying an efficiency would rise from \$2.84 per square foot to \$3.00 when using 30 percent of the income limit to set rents and from \$2.34 per square foot to \$2.50 when using 25 percent of the income limit. This suggests that small IZ units are priced comparably to current units in existing Class B buildings.

This information is further supported by data from the US Census American Community Survey (ACS). OP estimates from the 2012 ACS that households earning between 60 percent and 80 percent of the MFI on average spend 29% of their income on rent, with 43% of those households spending more than 30 percent of their income. The table in Table 7 estimates both the average percent of income spent on housing costs and the percent of households who spend more than 30 percent of their income on housing. The table illustrates the gap in affordability starts to widen in the District of Columbia for households earning less than 60 percent of MFI.

⁵ Delta Associates Mid-Atlantic Class A Apartment Market Report & Washington Metropolitan Area Class B Apartment Market Report. Class A buildings are defined as built in 1991 or later and offering a separate clubhouse, decorated model units, two bedroom/two bath units, and a large community amenity package most often including a fitness center and swimming pool. Class B is well maintained, older product, generally built in the 1960's or 1970's (some submarkets only have product older than 1960, so that is surveyed), and which does not offer a separate clubhouse nor decorated model unit nor two bedroom/two bathroom floor plans. Class B communities typically offer limited project amenities. The landlord typically pays gas and/or electric for the common areas and individual units.

Table 7. Percent of Income Spent on Rental Housing and Percent of Households Burdened by Housing Costs by MFI

	Median Family Income Range							
	< 30%	30%-50%	50%-60%	60%-80%	80%-100%	100%-120%	120%-150%	>150%
Avg Pct of Income Spent on Housing	69%	42%	35%	29%	25%	23%	20%	16%
Pct Spending more than 30% of income	83%	74%	57%	43%	29%	16%	9%	2%

Source:

2012 ACS PUMS, DC Office of Planning.

IZ unit sizes being produced are in many cases smaller than the assumed sizes used in the IZ Maximum Rent and Purchase Price Schedule. Administrative regulations permit the IZ units to be as small as the average comparable market rate unit. With the growth of micro units in many of the new construction projects, these sizes are ranging as small as 360 square feet. Therefore, actual IZ rents per square foot can be much higher than in Table 6.

Furthermore, 81 percent of the IZ units in matter of right unsubsidized projects are targeted to households at 80 percent of MFI and a majority are studios and one-bedrooms. Therefore, the vast majority of IZ production is serving households that may be met by market rate housing. All this suggests that there is an available stock of “well maintained” Class B rental housing stock in the District that can serve small households at 80 percent of MFI.

For this reasons OP is recommending that in the alternative IZ rental units be targeted for households earning 60 percent of the MFI.

Ownership Prices and Supply

A similar analysis of ownership units suggests that there is less overlap between IZ ownership units at 80 percent of MFI and available market rate units. Table 8 below presents the 2013 IZ prices for condominiums and the percent of market rates sales that are below the IZ price by unit type. While the average rental rates for IZ units were very similar to existing stock, IZ sales prices were at least \$32,000 less than the average market price even for studio units.

Table 8. 2013 IZ Condominium Sales Prices and Percent of Market Rate Sales Less than IZ.

Unit Bedrooms	Unit Size	IZ Prices		Average Market Price	Percent of Sales less than		
		50% MFI	80% MFI		50% MFI	80% MFI	80% MFI +\$40,000
0	500	\$ 117,900	\$ 214,600	\$ 247,202	0%	26%	64%
1	625	\$ 116,600	\$ 220,100	\$ 367,661	2%	10%	15%
2	900	\$ 122,800	\$ 247,000	\$ 564,617	3%	3%	8%
3	1,050	\$ 141,900	\$ 286,800	\$ 791,397	3%	18%	18%

Source: Office of Tax and Revenue, DHCD, DC Office of Planning, May 2014.

The analysis does need to take into account the marketing differences between rental and ownership units. An IZ occupant renting might prefer an IZ unit in a new building when rents are similar to older buildings, but price controls on IZ ownership units must take into account the available supply of older units without price controls. Table 8 shows that there is significant difference between the IZ units and the average, but that there is overlap particularly for studios.

The prices above do not take into account the condition of the units selling at or below IZ prices and the prices do not reflect the investment needed to upgrade them for occupancy. OP has heard from stakeholders that the marketability of price-controlled units is affected when the gap between competitive unrestricted supply is less than approximately \$40,000. For this reason OP is introducing the flexibility to offer for-sale units at lower target MFI at the developer's option in exchange for doing fewer units. Based on OP's initial analysis reducing the square footage requirement for moderate income units by 20 percent has a comparable impact on a project when those units are set aside for households at 60 percent of the MFI.

To prepare final recommendations OP will continue to review where the gap between household ability to pay and the price of supply starts to widen significantly. OP will further investigate the circumstances under which the prices of market rate units overlap with IZ units. This may be due to geography, size, condition and other factors. Indications are that the for-sale IZ units are meeting an unmet demand.

Discussion of Impact

The proposed amendments have potential impact on the economics of residential developments in the District. OP is still refining the impact assessment analysis of IZ and the potential changes discussed in this report. Table 9 provides an illustrative example of what this analysis currently looks like (results of analysis subject to change). The goal is to create a prototypical residential project that would be financially feasible within one or more neighborhoods of the District to estimate the impact of IZ on land values while holding a developer's return constant. OP is evaluating five types of projects including high-rise condominium and rental, low-rise condominium and rental and a for-sale row house development.

TABLE 9. Illustrative IZ Impact Assessment Analysis for For-Sale Residential Developments

	Factor	Base Market Rate Project			Base IZ
		Per NSF	Per Unit	Project	
Unit Sales Revenue		\$ 625	\$ 613,813	\$ 41,739,279	\$ 45,943,535
Parking Revenue	\$ 30,000	\$ 15	\$ 15,000	\$ 1,020,000	\$ 1,230,000
Total Revenue		\$ 640	\$ 628,813	\$ 42,759,279	\$ 47,173,535
Cost of Sale	5%	\$ 32	\$ 31,441	\$ 2,137,964	\$ 2,358,677
Warranty per Unit	\$ 2,500	\$ 3	\$ 2,500	\$ 170,000	\$ 170,000
Net Revenue		\$ 605	\$ 594,872	\$ 40,451,315	\$ 44,644,858
Hard Costs	\$ 168	\$ 205	\$ 201,293	\$ 13,687,902	\$ 16,425,483
Parking	0.50	\$ 18	\$ 17,813	\$ 1,211,250	\$ 1,460,625
Soft Costs	23%	\$ 51	\$ 50,394	\$ 3,426,805	\$ 4,113,805
Contingency	5%	\$ 11	\$ 10,955	\$ 744,958	\$ 894,305
Land Costs		\$ 175	\$ 171,507	\$ 11,662,495	\$ 11,025,291
Hurdle Rate/Minimum Return	31.6%	\$ 145	\$ 142,910	\$ 9,717,904	\$ 10,725,349
Total Costs		\$ 605	\$ 594,872	\$ 40,451,315	\$ 44,644,858
Return		31.6%	31.6%	31.6%	31.6%
Impact to Land					-5.5%

Since OP is still refining the analysis, there are no recommended changes in the percent of square feet required or a change in the bonus density. OP continues working on the analysis which will be presented in detail in the final public hearing report.

The amendments provided in the alternative shifts the target household for rental developments from 50 percent MFI and 80 percent MFI to 60 percent. In zones where the requirement is currently split it averages 65 percent of the MFI, the reduction to 60 percent has a relatively small impact from the current regulations. However, in zones where the IZ requirement is only 80 percent of MFI the reduction to 60 percent will have a more significant impact. More importantly OP’s proposal consolidates household income targets for ownership IZ units to just 80 percent of MFI and provides flexibility where IZ prices are too close to market to be competitive given their price controls.

This may alter the affordability on rental projects. OP’s original analysis suggested that the financial feasibility of rental developments was actually improved by IZ requirements and bonus density. More recently, OP has heard anecdotally from developers that IZ requirements combined with other economic and regulatory factors are favoring rental development over ownership. Still, OP is highly sensitive to how this may create disparate advantages for one form of development over another. For this reason, OP is very interested in hearing from stake holders regarding the cumulative impacts of these proposed recommendations and envisions organizing several working group sessions to

solicit feedback and better understand the potential impacts of these recommendations prior to submitting OP's final report.

II. CONCLUSION

OP recommends the Zoning Commission set down the proposed text amendments to Chapter 26 for public hearing. OP will continue to work with stakeholders and research how other jurisdictions approach the issues identified in this report in preparation of OP's final report.

OP will work with OAG to prepare any language set down by the Commission for notice of public hearing.

JLS/ar
Case Manager: Art Rodgers

ATTACHMENTS

Office of Planning's Proposed IZ Text Amendment

ATTACHMENT: OP PROPOSED IZ TEXT AMENDMENTS; CASE 04-33G

Below are the following amendments the Office of Planning recommends the Zoning Commission set down to receive comment at a public hearing. Deletions are formatted with ~~strike-through~~ while additions are **underlined bold** typeface.

Language in the alternative is **outlined in boxes**.

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 sizes of the units, the selection and obligations of eligible households, **administrative flexibility to ensure occupancy** 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 age ranges 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 DEFINITIONS

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

Achievable bonus density - The amount of the bonus density permitted under § 2604 that potentially may be utilized within a particular inclusionary development, notwithstanding constraints resulting from the physical characteristics of the land or restrictions imposed by District or federal laws and agencies.

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.

Bedroom – a room with immediate access to an exterior window and a closet that is designated as a “bedroom” or “sleeping room” on construction plans submitted in an application for a building permit for an Inclusionary Development.

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.

Alternative – see §2603.3

Eligible household - one or more persons certified by the Mayor as not exceeding the income requirements of this Chapter. ~~being a low- or moderate income household pursuant to the Act.~~

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

Alternative – see §2603.3

~~**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 (60%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.~~

Maximum Resale Price (MRP) – As defined by the formula found in Title 14 Chapter 22.

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.

Alternative – §2603.3 Definition needed to shift language away from using “low” and “moderate” income

Median Family Income (MFI) - the Median Family Income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for family size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers.

Alternative – §2603.3

~~**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, USN, CR, SP, StE, **HE** and ~~W-4~~ through W-3 Zone Districts, unless exempted pursuant to § 2602.3; **and**
- (b) **Are new construction or additions of gross floor area that would result in Have ten (10) or more dwelling units constructed concurrently or in phases on a lot or; on contiguous lots, including those divided by an alley, if the lots were under common ownership, control or affiliation within one year prior to the application for the first building permit** ~~(including off-site inclusionary units); and~~
- (c) **To existing gross floor area of residential use or converted to residential use where the new gross floor area described in 2602.1 (b) represents an increase of fifty percent (50%) or more gross floor area to an existing building; or** ~~Are either:~~
 - (1) ~~New multiple dwellings;~~
 - (2) ~~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~~
 - (3) ~~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.~~
- (d) **Any semi-attached, attached or multi-family residential development not described in §§ 2602.1 (b) or (c) that agrees to the requirements § 2603 and other requirements of this chapter provided, the square footage set aside achieves a minimum of one unit, and all other requirements of this chapter are met. Properties located in the areas identified by § 2602.3 (e) (3-6) may not use the modifications to height and lot occupancy, or minimum lot area or width.**

2602.2 A new development with less than ten (10) dwelling units shall 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~~ **three**-year period after the issuance of the ~~last~~ certificate of occupancy

first building permit, 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
- (e) Properties located in any of the following areas:
 - (1) The Downtown Development or Southeast Federal Center Overlay Districts;
 - (2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;
 - (3) The W-2 zoned portions of the Georgetown Historic District;
 - (4) The R-3 zoned portions of the Anacostia Historic District; and
 - (5) The C-2-A zoned portion of the Naval Observatory Precinct District.
 - (6) The Eighth Street Overlay.
- (f) Any development financed, subsidized, or funded in whole or in part by the federal or District government and administered by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority and that meets the requirements set forth in § 2602.7.

2602.4 Except as provided in §§ 2602.5, 2602.10, 2603.5, 2603.6, 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.

2602.7 A development exempted under § 2602.3(f) shall be subject to the following provisions:

- (a) The development shall set aside ~~for low or moderate income households~~, affordable dwelling units **for targeted households earning no greater than 80 percent of the MFI**

("Exempt Affordable Units") equal to at least the gross square footage that would have been required pursuant to §§ 2603.1 and 2603.2. The terms "low income household" and "moderate income household" shall have the same meaning as given them by the federal or District funding source, or financing or subsidizing entity, and shall hereinafter be referred to collectively as "Targeted Households";

- (b) The Exempt Affordable Units shall be reserved for the ~~T~~targeted ~~H~~households and sold or rented in accordance with the pricing structure established by the federal or District funding source, or financing or subsidizing entity, for so long as the project exists;
- (c) The requirements set forth in § 2602.7(a) and (b) shall be stated as declarations within a covenant approved by the District; and
- (d) The approved covenant shall be recorded in the land records of the District of Columbia prior to the date that the first application for a certificate of occupancy is filed for the project; except that for developments that include one-family dwellings, the covenant shall be recorded before the first purchase agreement or lease is executed.

2602.8 No exemption may be granted pursuant to § 2602.3 (f) unless the Zoning Administrator receives a written certification from the DHCD Director that the development meets the requirements of § 2602.7(a) and (b).

2602.9 A development exempted by § 2602.3(f) may, nevertheless, utilize the bonus density and zoning modifications provided for in § 2604 and the zoning overlay provisions of Chapters 11 - 16, 18, or 19.

2602.10 The requirements of this chapter shall automatically terminate if title to the mortgaged property is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in the first position, or a mortgage in the first position is assigned to the Secretary of the U.S. Department of Housing and Urban Development.

2603 SET-ASIDE REQUIREMENTS

2603.1 An inclusionary development for which ~~the primary method of construction~~ does not employ **Type I construction as defined by the D.C. Building Code** ~~steel and concrete frame structure~~ **to construct the majority of dwelling units** located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 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 **which employs Type I construction as defined by the D.C. Building Code** ~~of steel and concrete frame construction~~ **to construct the majority of dwelling units** 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, USN, W-2, or W-3 Zone District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use or fifty percent (50%) of the bonus density ~~utilized~~ for inclusionary units.

- 2603.3 Inclusionary developments located in R-~~23~~ through R-5-~~DE~~, C-1, C-2-A, C-2-B, C-3-A, SP-1, StE, W-0 ~~and through W-2+~~ Districts shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (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-C, ~~through~~ C-3-C, USN, ~~W-2 through~~ W-3, and SP-~~2~~ Zone Districts shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households.

OPTION #2

2603.3 Inclusionary set asides required by §2603.1 and §2603.2 shall target households earning equal to or less than:

(a) 60 percent of the MFI for rental units; and

(b) 80 percent of the MFI for ownership units.

~~2603.3 Inclusionary developments located in R-2 through R-5-D, C-1, C-2-A, StE, W-0 and W-1 Districts shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (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, USN, W-2 through W-3, and SP Zone Districts shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households~~

2603.X The square footage set aside for sale to eligible households earning equal to or less than 80 percent of the MFI may be reduced by 20 percent provided all the units are set aside to households earning 60 percent of the MFI.

- 2603.5 The Mayor or the District of Columbia Housing Authority shall have the right to purchase ~~up to~~ **the greater of one IZ Unit or** twenty-five percent (25%) of **for-sale** inclusionary units, **or any percentage agreed to by the owner of the Inclusionary Development** in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.
- 2603.6 Notwithstanding § 2603.5, nothing shall prohibit the Mayor or the District of Columbia Housing Authority to acquire title to inclusionary units in a for-sale inclusionary development if any of the following circumstances exist:
- (a) There is a risk that title to the units will be transferred by foreclosure or deed-in-lieu of foreclosure, or that the units' mortgages will be assigned to the Secretary of the U.S. Department of Housing and Urban Development; or

- (b) Title to the units has been transferred by foreclosure or deed-in-lieu of foreclosure, or the units' mortgages have been assigned to the Secretary of the U.S. Department of Housing and Urban Development.

2603.7 An inclusionary development of steel and concrete frame construction located in a StE District shall devote no less than eight percent (8%) of the gross floor area being devoted to residential use in a StE District.

2603.8 When dwelling units are located in cellar space or enclosed building projections extending into public space, then the entire development's residential floor area within those spaces shall be included for purposes of calculating the minimum set-aside requirements of §§ 2603.1 and 2603.2

2604 BONUS DENSITY

2604.1 Inclusionary developments subject to the provisions of this chapter, except those located in the StE District, 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 bonus density:

Base Zone	Matter-of-Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Zoning Height (feet)	Zoning FAR	Lot Occupancy	Height (feet)
R-5-E	75%	90	6.00	90%	90
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 80%	90 100
C-3-A	75%	65	4.00	80%	65
<u>C-3-C</u>					
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
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	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

2604.4 Increases in FAR as a result of variances granted by the BZA shall be treated as bonus density for the purposes of calculating the maximum IZ requirement.

2605 DEVELOPMENT STANDARDS

2605.1 [REPEALED]

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 finishes 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 comprised of less expensive materials and equipment **so long as the interior amenities are durable, of good quality, and consistent with contemporary standards for new housing.**

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, **tenure or dwelling type including multiple-dwellings, single household dwellings, or flats** of an **Inclusionary Development** project.

2605.7 In an Inclusionary Development subject to 2602.1 (c) or 2602.2, Inclusionary Units may be located solely in the new addition provided all the existing units were occupied at the application for the addition’s building permit and all other requirements of this chapter are met.

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 an IZ Development owner economically viable use of its land.
- 2606.2 No application from an IZ Development owner for a variance from the requirements 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 The Zoning Commission may grant relief from the requirements of § 2603 to an Eligible Household that owns an Inclusionary Unit on the consent calendar provided:

- (a) Condominium or Homeowner association fees have increased to make the unit unaffordable to other Eligible Households as defined by Title 14 Chapter 22; and
- (b) The application for relief includes written confirmation of § 2606.3 (a) from the Director of DHCD; and
- (1) The IZ covenant remains and the unit is sold at the Maximum Resale Price (MRP) if the income of the Eligible Household purchasing the unit does not exceed 100 percent of the MFI; or
- (d) If the IZ covenant is terminated and the unit is sold above the Maximum Resale Price, a fee equal to any net proceeds from the sale that are above and beyond the Maximum Resale Price are deposited into the District's Housing Production Trust Fund as a housing linkage defined by § 2499.

2607 OFF-SITE COMPLIANCE

- 2607.1 Some or all of the set-aside requirements of § 2603 may be constructed off-site to another location within 2,640 feet of the on-site property provided:
- (a) The square footage of requirement transferred off-site is twenty (20) percent greater than what would have been required at the on-site location;
- (b) All other provisions of 2607.3 and the rest of this section have been met.
- 2607.12 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of § 2603 to be constructed off-site anywhere within the District of Columbia 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 the owner of which 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.

2607.23 **Both administrative and BZA applications for off-site provision** ~~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;
- (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
- (i) All dwelling units as are required to be reserved in the off-site development shall be deemed inclusionary units for the purposes of this Chapter and the Act.**

~~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~~ **The off-site compliance shall become effective not relieve a site of its on-site requirement** 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 offsite 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) Acknowledge 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 of this Chapter as adopted by Zoning Commission Orders No. 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 upon the publication of the first purchase/rental schedule in the *D.C. Register*.

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 March 14, 2008.

3040 FILING FEES

3040.7 No fee shall be charged for applications pursuant to § 2603.3.