

April 21, 2006

Ms. Carol Mitten  
Chair, District of Columbia Zoning Commission  
441 4<sup>th</sup> Street, NW, Suite 210  
Washington, DC 20001

c/o  
Ms. Cheryl Cort  
WRN  
4000 Albemarle Street, NW Suite 305  
Washington, DC 20016

Re: Case No. 04-33, Inclusionary Zoning

Dear Ms. Mitten:

Attached please find comments from the steering committee of the D.C. Campaign for Mandatory Inclusionary Zoning regarding the Zoning Commission's Notice of Proposed Rulemaking for a text amendment to require the provision of affordable housing through inclusionary zoning. These elements will promote the effectiveness of the inclusionary zoning program over the long-term:

- Adopting a program that will be **mandatory** in all areas to be mapped;
- Requiring that inclusionary units remain affordable for ninety-nine (99) years; and
- Limiting the placement of inclusionary units off-site to circumstances that present a demonstrable economic hardship to the developer.

There are also several key points that we believe merit clarification or revision to strengthen the program. They are:

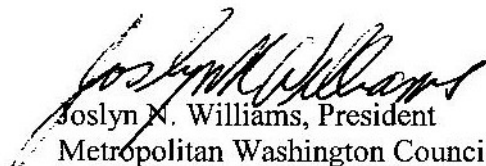
- Including PUDs in the mandatory inclusionary zoning requirements, creating potentially 150-300 units per year;
- Reducing the income maximum in high-rise buildings below 80% AMI to 70% AMI by making half the high-rise units affordable at 80% AMI and half at 60% AMI;
- Permitting inclusionary units to be smaller – at or above prescribed minimums – than market rate units.
- Allowing rentals in for sale buildings when providing the first-right to purchase inclusionary units for non-profits and the D.C. Housing Authority.

If you have any questions or requests, please contact Cheryl Cort at 202-244-1105.

Thank you for your consideration.

Sincerely,

Cheryl Cort, Executive Director  
Washington Regional Network for Livable  
Communities

  
Joslyn N. Williams, President  
Metropolitan Washington Council, AFL-CIO

Nina K. Dastur, Grassroots Policy Specialist  
Center for Community Change

Jim Campbell, Principal  
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Radhika K. Fox, Senior Associate  
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Pocahontas Outlaw, Board Member  
DC ACORN

Avi Rosenblit, Director  
Rabbi Alana Suskin  
Jews United for Justice

Tad Baldwin  
Retired, for- and non-profit developer

The members of the D.C. Campaign for Mandatory Inclusionary Zoning are pleased to submit comments on the proposed regulations to establish an Inclusionary Zoning (IZ) Program in the District of Columbia, promulgated by the D.C. Zoning Commission and published in the D.C. Register on March 10, 2006. As the Commission is aware, the Campaign is quite eager to see the implementation of inclusionary zoning in the District, and publication of these rules moves the city closer to that goal.

Briefly, we commend the Commission for three key decisions that reflect a strong commitment to ensuring that inclusionary zoning is a critical part of the solution to the District's affordable housing crisis. These elements will promote the effectiveness of the IZ program over the long-term:

- Adopting a program that will be **mandatory** in all areas to be mapped;
- Requiring that inclusionary units remain affordable for ninety-nine (99) years; and
- Limiting the placement of inclusionary units off-site to circumstances that present a demonstrable economic hardship to the developer.

### **Mandatory Inclusionary Zoning**

We know that developers in particular have urged the Commission to adopt a voluntary program. However, as the Commission has seen from evaluations of voluntary IZ programs where they have been adopted throughout the country, voluntary programs have not proven to produce affordable units in significant numbers. In fact, a number of jurisdictions have switched from voluntary to mandatory policies precisely because the voluntary programs were producing few if any units.<sup>1</sup> Second, voluntary programs are economically inefficient; in order to succeed in inducing developers to participate, incentives must be exceedingly generous, of a value beyond the actual cost of producing and operating the affordable units. This problem is exacerbated in especially lucrative real estate markets like the District, where incentive-based programs have extreme difficulty competing with market forces.

Finally, developers with whom we met, regardless of whether they supported IZ, all stressed that to be effective an IZ program had to be predictable and consistent. When set-aside requirements are predictable, a developer has a measure of security in calculating any costs associated with affordable housing requirements and the value of benefits provided in exchange, such as density bonuses or other zoning variances, and can appropriately value land costs. For similar reasons, when program requirements are consistently applied and a developer knows that a competitor will be subject to the same requirements and will be compensated with the same benefits, he can fairly compete to acquire land and finance his projects. A voluntary program, where the developer negotiates incentives and affordability requirements with a government agency like the Office of Planning (for example, in the PUD process) is neither predictable nor consistent. As a result, negotiations over the set-aside terms, income targeting levels and benefits adds speculation, risk, and time – and therefore money – to the project, especially when subject to a public process. A mandatory program avoids this potential cost.

### **99-Year Control Periods**

Similarly, the experience from inclusionary zoning programs that have been enacted across the country demonstrates the folly of losing affordable units from the housing stock upon the expiration of affordability control periods that have been set too short. No matter how long ten or even twenty years seems at the outset of a policy, the years pass quickly, and it is rare that affordable housing pressures

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<sup>1</sup> The memorandum accompanying our submission of supplemental materials details reports analyzing voluntary IZ programs around the country and findings regarding their inefficacy.

abate during that time. In fact, part of the District's current housing crisis derives from the expiration of twenty (20) and twenty-five (25) year controls on federally subsidized housing developments. Based on the tremendous loss of units from its Moderately Priced Dwelling Unit (MPDU) program, Montgomery County recently adopted control terms of ninety-nine (99) years for rental housing and 30 years for sale units. Nationally, 22 jurisdictions have 99-year or permanent affordability control periods on rental units and 15 jurisdictions have those parameters on for sale units. The Commission's proposal to establish ninety-nine year affordability terms for both rental and homeownership units reflects sound public policy that will help to ensure that the District's IZ program produces a stock of affordable housing and helps to establish stable, mixed-income neighborhoods, two principal goals of IZ policies.

Homeownership provides a number of benefits to working families including security of tenure, stability of housing costs, ability to modify the home, and equity buildup. Economic gains that come from having stable housing costs, while household income rises, can be invested in assets that are more liquid and just as a lucrative as real property. One of the strengths of mandatory inclusionary zoning with 99-year affordability control periods is that it achieves all of these goals while building a stock of affordable housing and effectively leveraging the public investment. A stock of affordable housing is created as units are resold at price-controlled levels and this guarantees that the public investment is preserved through permanent affordability. Also, as inclusionary units are resold, their new sales price (which increases with the AMI and other factors over time) provides substantial equity to the initial homebuyer. For example, the initial buyer purchases a home for \$187,000. If she decides to sell 15 years later, based on 3.5 percent appreciation, the home will now sell for approximately \$313,000. This is \$126,000 in equity for a first time homebuyer that enables her to move up the economic ladder while also preserving the affordable unit.

### **Limiting Off-Site Development of Inclusionary Units**

As the Commission heard from public witnesses during the three days of hearings on this matter, mixed-income, racially-integrated neighborhoods are just as important to the residents of the District as the provision of affordable housing. The community support for inclusionary zoning largely stems from the feeling that our neighborhoods are extensively and increasingly segregated by class and race, and that the production of mixed-income housing, through inclusionary zoning, can not only provide low and moderate income families with access to affordable housing, job opportunities and better transportation, but also promote healthier, more diverse, more vibrant communities. The Commission's decision to require on-site development in all cases except those posing an economic hardship to the developer reinforces the psychological benefits that the community values in inclusionary development. This sends a strong message that District policies should to the greatest extent possible enable low- and moderate-income residents to live throughout the city.

There are also several key points that we believe merit clarification or revision to strengthen the program. They are:

- Including PUDs in the IZ requirements;
- Reducing the income maximum in high-rise buildings below 80% AMI;
- Permitting IZ units to be smaller – at or above prescribed minimums – than market rate units.
- Allowing rentals in for sale buildings when providing the first-right to purchase inclusionary units for non-profits and the D.C. Housing Authority.

### **IZ Should Apply to PUDs**

The Zoning Commission is considering excluding PUD projects, which will significantly undermine the goals of the IZ program, particularly the production of affordable housing. PUDs are more commonly proposed near Metro stations and in other high growth areas, the same areas where we expect IZ to apply, and are critical to linking low and moderate income residents to job opportunities and good

public transit. If the IZ program covered PUDs we would expect the program to generate 150-300 units/year.<sup>2</sup> If PUDs are excluded, the number of units created could be reduced significantly.

We are particularly concerned that the PUD process could be seen as a way to avoid providing the affordable housing required under IZ. Typically, PUD projects have been required to provide less affordable housing than would be required under the proposed IZ rules. Additionally, current PUDs have affordability control periods of only 10 years, much shorter than the 99-year period that would apply to developments covered by IZ. These “incentives” would provoke many developers to redefine their projects as PUDs, not only undermining IZ in the District, but also increasing the administrative burden on the Zoning Commission.

We respect the desire on the part of the Zoning Commission to ensure that the PUD process continue to be used to secure community benefits other than affordable housing. However, PUD projects should nevertheless be required to satisfy the affordable housing requirements that will apply to by-right development projects under the IZ program. Given the history of PUDs in the District, we believe that these principles are not mutually exclusive -- the bonus density provided to PUD projects can accommodate both affordable housing as well as other community benefits.

Currently, according to the D.C. Office of Planning, PUDs receive an average of 30-40% bonus density, sometimes securing as much as 80-100% bonus density, which should provide sufficient opportunity to achieve both affordable housing and the other goals of PUDs. We propose that the Commission adopt a hybrid IZ requirement for PUDs that would establish an affordable housing requirement relative to bonus density achieved and still allow for other community benefits. We propose that the developer include the affordable housing required under IZ for the first 20% of bonus density provided under the PUD process, (8/10% of by right or 50/75% of bonus, whichever is greater). For bonus density in excess of 20% but less than 40%, 25% of the extra density should be set aside for affordable housing. This allows for a consistent and predictable application of the MIZ requirements up to 40% bonus density -- one of the developers’ principal requests -- while also leaving room for the remaining bonus density to subsidize other community needs.

The hypothetical example below shows how the Campaign’s compromise proposal will generate a substantial additional amount of more affordable housing than the Office of Planning’s current proposal.

Base zoning: 60 high-rise housing units  
40% PUD Bonus 24 high-rise housing units  
Total Bldg Size 84 high-rise housing units

OP Proposal: 8% of the base zoning or 8% times 60 units = 4.8 units, rounded to 5 affordable units

Campaign Compromise Proposal:

Half of the first 20% of the bonus: 50% times 12 units = 6 units  
+ 25% of the second 20% of the bonus: 25% times 12 units = 3 units  
Total Campaign Proposal = 9 units

### **Income Maximum in High Rises Should be Reduced to below 80% AMI**

The Zoning Commission is proposing to set aside 50% of inclusionary units for eligible low-income households (50% AMI) and 50% of inclusionary units for eligible moderate-income households (80% AMI) in low and mid-rise development. For high-rise development, the Zoning Commission is proposing to set aside 100% of inclusionary units for eligible moderate-income households (80% AMI).

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<sup>2</sup> In 2005, according to analysis by DCOP, nearly 3,000 building permits were issued. Also, the Comprehensive Housing Strategy Task Force called for the construction of 3,000 units per year. Based on these figures, where the policy is mapped, and assuming 8% or 10% of by-right for affordable housing, a prediction of 150-300 units per year is reasonable.

The proposal for high-rise development submitted by the CMIZ would serve some households at 50% AMI and below (while causing no net loss to the developer), which is critical because those households have demonstrably greater affordable housing needs. See The DC Fiscal Policy Institute's Report "Squeezed Out: The worsening shortage of Affordable Housing for Low-Income DC Households," attached to our pre-hearing submission.

The Campaign suggests that the Commission at least establish affordability of half the high-rise units at 80% AMI and half at 60% AMI – a compromise from our original proposal. It was claimed that the 80% income target was necessary to avoid economic harm to developers justified by the higher construction costs inherent to high-rise development. While acknowledging higher cost levels for these units, our own calculations and those by several members of the development community demonstrate that high rise developments could in fact support some income targeting at 60% AMI. Indeed, our interpretation of the OP numbers also provides support for income levels below the 80% AMI level.

Summary financial information from a variety of sources is provided below:

1. Campaign High Rise Pro-Formas

Utilizing a hard cost per square foot of \$145.48 and a total unit cost of \$216.88, at an average AMI of 70% (half at 80%, half at 60%), the summary numbers below for a two bedroom unit assume a 5% down payment and a 7.5% thirty year mortgage. Four-person occupancy assumed.

Needed Mortgage Amount To Support Costs	\$175,128
Monthly Payments at 30% of Income to Support Mortgage of	\$159,100
Gap to fill with part of profit from Bonus Units	\$ 16,028

Given profit levels of twenty percent (20%) on market rate condominiums priced at \$500,000 or more, a small portion of the \$100,000 + profit would easily cover this cross-subsidy and still provide an ample profit. This is far more than a breakeven return.

2. Office of Planning Spread Sheets

OP's financial estimates as provided in their July 15, 2005 attachments to their Zoning Commission submission show the minimal effect that the Campaign's proposed income guideline have upon developer yields. Its work is based upon the financial estimates provided by two high-rise developers.

Their baseline returns of a 150-condo development without affordable units estimates the following (page 11):

Return on Cost	21.2%
IRR	30.3%

Their table on page 23 estimates that the Campaign's original proposal (12% of units affordable) of an average of the units serving households at 65% of the median is:

Return on Cost	20.1%
IRR	27.3%

OP reduced the affordable percentage to 10% and raised the income levels to 80% of the median. Their results were:

Return on Cost	21.5%
IRR	28.6%

Our conclusion is that yields for this important public purpose are very little affected, even before the Campaign raises its average income level to 70%. In fact, the Return on Cost of the OP model at 21.5% is even in excess of the return on the development without any affordable units (21.2%).

### 3. Stan Sloter Financial Model

Mr. Sloter, an experienced high-rise developer with Paradigm, presented pro-formas at early meetings on this issue that indicated the financial feasibility of incorporating affordable units. The first year total return on total cost for a 250-unit market rate condo development was 5.85%. With a 20% density bonus and a 10% affordable housing requirement serving households at 70% AMI, the yield shrunk by a minimal .03% to 5.82%, keeping the project feasible.

### 4. Testimony by Jim Campbell, President of Somerset Development Company

Mr. Campbell, an experienced developer of mixed income housing in both the District and nationally, testified before the Zoning Commission on July 25, 2005 that inclusionary zoning can work in the District. He also indicated that the financial estimates he reviewed did not take into account the lower marginal costs of the additional space required by the market and affordable bonus units, showing a conservative bias that exaggerates the cost of providing these units. The projections also exaggerate the additional time required to build these units and also does not take into account the almost complete lack of risk due to the strong purchaser/renter demand for below market units, especially in prime locations where the high rises will be built.

In conclusion, we urge the Commission to revise the proposed rulemaking to require half the affordable units in high rise developments be made affordable to households at 60% of the AMI, and the other half at 80% AMI.

### **Permit IZ units to be smaller – at or above prescribed minimums – than market rate units**

Reflecting the Commission's desire to ensure that affordable units are compatible with market units, the proposed rules would require that unit sizes be identical, or vary by no more than five percent. While the intent is laudable, this requirement is unduly restrictive, and can compromise program goals in several ways, especially in developments with very upscale and large condominium units. We urge the Commission to prescribe minimum sizes for affordable units, but to otherwise permit developers to vary the size of affordable units from those provided at the market rate.

If affordable units are required to be nearly the same size as the market rate units, fewer affordable units will be produced. Affordable units can usually be provided in smaller sizes than the market rate units. Allowing flexibility above a minimum unit size would enable mandatory inclusionary zoning to create a higher number of units.

In addition, to the extent that condo fees are based on square footage rather than constrained sales prices, the high fees occasioned by larger units could render homes too costly for the household income levels being served.

A related change that could encourage more units to be provided is a shift to having the requirement stated in affordable housing units rather than square feet. This is also a far simpler approach for monitoring since the unit count of a building can be easily determined. Monitoring becomes even more difficult when some developers will refer to net rather than gross square feet or especially when a mixed-use building must allocate common areas among various uses.

### **First Right to Purchase and Allowing Rentals in Sale Buildings**

We support the Commission's proposal to provide the D.C. Housing Authority and qualified non-profits with the first right to purchase or rent up to 25% of the units developed under the program. While exercising this right obviously depends on whether these entities have adequate resources, it provides the potential to make inclusionary units available to lower income households by using subsidies available to DHCA or nonprofits (for example, Housing Choice Vouchers, known commonly as "Section 8").

The prohibition of rental of units purchased by the Housing Authority and approved non-profits in condominiums to lower income households under a variety of existing and new programs unnecessarily limits the reach of the program. In particular, this type of program has worked well in Montgomery County as well as elsewhere in enabling housing providers to serve special needs populations. While in the past there may have been a reluctance of some lenders to provide financing for condominium units in buildings where more than thirty percent (30%) of the units were rentals, that reluctance has been largely overcome by positive experiences with the number of units rented within older condo buildings.

Most importantly, many condominiums are purchased by investors, and leased for rental income. Currently, there are no restrictions on this practice in the District. If there is no similar requirement imposed on the market rate condominiums in a development project, then an occupancy restriction on the IZ units is inappropriate, and reflects a discriminatory and pejorative attitude toward moderate-income households that has no evidentiary basis. We urge the Commission to remove this restriction.

Thank you for the opportunity to submit comments on the Commission's Notice of Proposed Rulemaking. The Campaign for Mandatory Inclusionary Zoning would be happy to discuss any of these issues with you further.