



OAG TEXT AMENDMENT PETITION TO THE ZONING COMMISSION
Z.C. CASE NO. 21-XX – INCREASED AFFORDABILITY FOR INCLUSIONARY ZONING
DECEMBER 2, 2021

PROPOSED TEXT AMENDMENT

The Office of the Attorney General (“OAG”) petitions the Zoning Commission for the District of Columbia (the “**Commission**”) to amend the following provisions of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all citations refer unless otherwise specified):

- Subtitle C § 1003.7

OAG’s [proposed text amendment](#) would deepen the levels of affordability required for dwelling units set aside under the Inclusionary Zoning (“IZ”) regulations by lowering the maximum Median Family Income (“MFI”) level as follows:

- For rental units:
 - Reserve at least one unit at the 30% MFI limit;
 - Lower the maximum MFI level for the remaining IZ units to 50% MFI from the current 60% MFI; and
 - Incentivize deeper affordable units by authorizing the substitution of two 30% MFI IZ units for three of the required 50% MFI IZ units; and
- For ownership/for-sale units:
 - Lower the maximum MFI level to 70% from the current 80% and
 - Incentivize deeper affordable units by authorizing the substitution of two 50% MFI IZ units for three of the required 70% MFI IZ units.

JUSTIFICATION

OAG proposes to deepen the affordability of IZ units, by reducing the MFI allowed and incentivizing extremely low income/30% MFI units, to restore the IZ program’s initial targeted income levels that have been steadily increasing due to rising District median income levels and housing costs. The Commission created the IZ program in 2006 to further the Comprehensive Plan (Title 10A of the DCRM, the “CP”) to:

“(1) create diverse neighborhoods by providing housing areas where development costs have previously inhibited the supply of affordable housing and

(2) more broadly provide affordable housing for current and future residents of the District”¹

The IZ program initially required half of the IZ units at 50% MFI and half at 80% MFI, which at the time corresponded to \$40,763 or \$65,220 respectively (adjusted for inflation²). In 2016, the Commission recast these MFI limits as 60% MFI for rental units and 80% MFI for ownership units (Subtitle C § 1003.7). In the 15 years since the IZ program launched, the District’s MFI has

¹ [Z.C. Notice of Final Rulemaking & Order No. 04-33, at 8 \(citing CP § 300, et seq.\)](#).

² [Inflation rendered \\$1 at the August 2006 effective date of Z.C. Order No. 04-33 worth \\$1.36 in 2021 \(U.S. Bureau of Labor Statistics\)](#).

OAG Petition - December 2, 2021 – Increased Affordability/MFI Levels
Z.C. Case No. 21-XX

increased almost 60% – from an adjusted \$81,525³ in 2006 to \$129,000 today – reflecting an influx of wealthier new residents that shifts the median income higher.⁴

Year	MFI	30% MFI	50% MFI	60% MFI	70% MFI	80% MFI
2006 (in 2021 dollars)	\$60,100 (\$81,525)	--	\$30,050 (\$40,763)	--	--	\$48,080 (\$65,220)
2016 (in 2021 dollars)	\$108,564 (\$124,373)	--	--	\$65,138 (\$74,623)	--	\$86,851 (\$99,498)
2021	\$129,000	\$38,700	\$64,500	\$77,400	\$90,300	\$103,200

During that same time, the limited wage growth in lower income jobs did not keep up with the growth for higher wage workers; a trend that the updated CP anticipates will continue with many of the jobs projected to be created in the next 10 years being insufficient to afford housing in the District (CP §§ 204.9-10, 500.7c, 500.19, 504.4). Simultaneously, housing costs increased significantly, and the District lost lower-cost housing, losing almost a third of rental units affordable to households earning less than 50% of the MFI between 2005 and 2017, resulting in more District households that are severely burdened by housing costs (CP §§ 206.2-206.5, 206.8, 504.1, 504.3). Lower- and middle-income households similarly saw a loss of affordable homes, which the updated CP noted “may reinforce racial patterns of settlement in the District and/or create additional market pressure on the housing prices in eastern neighborhoods” (CP §§ 204.15, 206.7, 500.15, 500.19, 500.24). The updated CP notes that this income disparity and loss of affordable housing options has more heavily impacted residents of color who are more heavily represented in the lower income groups, resulting in worsening racial inequality in housing access and affordability, and increased risk of displacement of communities of color (CP §§ 500.5, 500.7c, 500.19, 504.3, 504.7).

In response, the updated CP highlights the importance of preserving and developing housing affordable to extremely low-income, low-income, and workforce households:

- “Affordable renter- and owner-occupied housing production and preservation is central to the idea of growing more inclusively” and is “essential to avoid a deepening of racial and economic divides in the city and must occur city-wide to achieve fair housing objectives.” (CP §§ 206.8, 220.5); and
- “[M]ore deeply affordable housing production and preservation is needed to advance racial equity in housing because of the racial income gap ... an effective allocation of resources is needed for housing preservation and production targeted to very-low- and extremely-low-income households” (CP § 504.7).

The updated CP therefore calls for 70% of new affordable housing units to be reserved for households earning 60% MFI or less, with more than half of these units reserved for households earning 30% MFI or less (CP §§ 500.25, 504.9, 504.20-504.21).

³ [U.S. Department of Housing and Urban Development, Notice PDR-2006-01 \(March 8, 2006\)](#)

⁴ Between 2006 and 2017, more than 37,600 higher-income households (earning more than 120% of the MFI) moved into the District, while 15,600 lower-income households (earning less than 80% of the MFI) left the District (CP §§ 204.15, 206.8, 206.9, 500.7c, 504.1).

Yet despite these significant economic and demographic changes and in contrast to the updated CP's goals, the IZ program has retained the same MFI limits, which has effectively increased the maximum cost of an IZ unit. At the same time, affordable units available to households at or under the 30% MFI level account for only approximately 20% of the affordable units built between 2015 and 2019⁵ further limiting housing options for the growing percentage of extremely low-income households. OAG proposes to address this by:

- Increasing the affordability of IZ units by lowering the overall MFI levels by 10% (from 60% MFI to 50% MFI for rental units and from 80% MFI to 70% MFI for ownership units);
- Increasing the production of IZ units reserved for extremely low-income households earning 30% MFI or less by:
 - Requiring at least one 30% MFI IZ unit in all rental buildings and
 - Permitting two 30% MFI IZ units in place of any three required 50% MFI IZ units; and
- Increasing the production of IZ ownership units reserved for households earning 50% MFI or less by permitting two 50% MFI IZ units in place of any three required 70% MFI IZ units.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

As discussed above, OAG's proposed text amendment complies with the Zoning Act's charge that the zoning regulations "shall not be inconsistent with the comprehensive plan ...[and] shall be designed ... to promote health and the general welfare ... [and the] distribution of population and of the uses of land as would tend to create conditions favorable to health ...[and] prosperity" (D.C. Code § 6-641.02). The proposed text amendment would further two of the "critical land use issues" identified by the CP:

- "Providing adequate housing, particularly affordable housing"; and
- "Conserving, creating, and maintaining inclusive neighborhoods, while allowing new growth that fosters equity, including racial equity, and accessibility" (CP § 300.2);

as well as the following CP policies:

- ***Policy LU-01.2.4: Urban Mixed-Used Neighborhoods***

Encourage new mixed-use neighborhoods combining high-density residential, office, retail, cultural, and open space uses in the following areas:

- Mount Vernon Triangle;
- NoMa;
- Downtown East and Pennsylvania Avenue;
- Buzzard Point/National Park/Audi Field;
- Near Southeast/Navy Yard;
- Capitol Crossing (neighborhood between Capitol Hill and Gallery Place);
- Union Station air rights; and
- Near Southwest/Wharf/L'Enfant Plaza Metro Area.

The location of these areas is shown in the Central Washington, and Lower Anacostia Waterfront/Near Southwest Area Elements. Land use regulations and design standards for these areas should require that they are developed as attractive pedestrian-oriented neighborhoods, with high-quality architecture and public spaces. Housing, especially affordable and deeply affordable housing, is particularly encouraged and must be a vital

⁵ [DMPED's Affordable Housing Production and Preservation Dashboard](#).

component of the future land use mix. As areas continue to redevelop, community engagement and actions shall be undertaken to retain existing residents, particularly communities of color and vulnerable populations, and enable them to share in the benefits of area redevelopment while addressing adverse short- and long-term impacts. (CP § 305.11)

- ***Policy LU-2.1.2: Neighborhood Revitalization***

Facilitate neighborhood revitalization by focusing District grants, loans, housing rehabilitation efforts, commercial investment programs, capital improvements, and other government actions in those areas that are most in need, especially where projects advance equitable development and racial equity, as described in Section 213 of the Framework Element, and create opportunities for disadvantaged persons and for deeply affordable housing. Engage and partner in these efforts with the persons intended to be served by revitalization, especially residents. Use social, economic, and physical indicators, such as the poverty rate, the number of abandoned or substandard buildings, the crime rate, and the unemployment rate, as key indicators of need. (CP § 310.9)

- ***Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods***

Recognize the importance of balancing goals to increase the housing supply, including affordable units, and expand neighborhood commerce with parallel goals to preserve historic resources, advance environmental and sustainability goals, and further Fair Housing. The overarching goal to create vibrant neighborhoods in all parts of the District requires an emphasis on conserving units and character in some neighborhoods and revitalization in others, including inclusive and integrated growth and meeting communities and public facility needs. All neighborhoods have a role to play in helping to meet broader District-wide needs, such as affordable housing, public facilities, and more. (CP § 310.10)

- ***Policy H-1.1.2: Production Incentives***

Provide suitable regulatory, tax, and financing incentives to meet housing production goals, prioritizing affordable housing production in support of the targets in Policy H-1.2.2. These incentives should continue to include zoning regulations that permit greater building area for commercial projects that include housing than for those that do not, and relaxation of height and density limits near transit. Strongly encourage incentives and strategies that result in the production of more deeply affordable housing, such as the use of income averaging across a range of affordable housing income levels. (CP § 503.4)

- ***Policy H-1.1.8: Production of Housing in High-Cost Areas***

Encourage development of both market rate and affordable housing in high-cost areas of the District, making these areas more inclusive. Develop new, innovative tools and techniques that support affordable housing in these areas. Doing so increases costs per unit but provides greater benefits in terms of access to opportunity and outcomes. (CP § 503.10)

- ***Action H.1.1.D: Research New Ways to Expand Housing***

Continue research to expand market rate and affordable housing opportunities in Washington, DC, such as expanding existing zoning tools and requirements. Consider a broad range of options to address housing constraints, which could include updating the Height Act of 1910 (a federal law) outside of the L'Enfant Plan area, if it can promote housing production. (CP § 503.13)

- ***Policy H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority***

The production and preservation of affordable housing for low- and moderate-income households is a major civic priority, to be supported through public programs that stimulate

affordable housing production and rehabilitation throughout all District neighborhoods. (CP § 504.8)

- ***Policy H-1.2.2: Production Targets***

Consistent with the Comprehensive Housing Strategy, work toward a goal that one-third of the new housing built in Washington, DC from 2018 to 2030, or approximately 20,000 units, should be affordable to persons earning 80 percent or less of the area-wide MFI. In aggregate, the supply of affordable units shall serve low-income households in proportions roughly equivalent to the proportions shown in Figure 5.8: 30 percent at 60 to 80 percent MFI, 30 percent at 30 to 60 percent MFI, and 40 percent at below 30 percent MFI. Set future housing production targets for market rate and affordable housing based on where gaps in supply by income occur and to reflect District goals. These targets shall acknowledge and address racial income disparities, including racially adjusted MFIs, in the District, use racially disaggregated data, and evaluate actual production of market rate and affordable housing at moderate, low, very-low, and extremely-low income levels. (CP § 504.9)

- ***Policy H-1.2.3: Affordable and Mixed-Income Housing***

Focus investment strategies and affordable housing programs to distribute mixed-income housing more equitably across the entire District by developing goals and tools for affordable housing and establishing a minimum percent affordable by Planning Area to create housing options in high-cost areas, avoid further concentrations of affordable housing, and meet fair housing requirements. (CP § 504.10)

- ***Policy H-1.2.11 Inclusive Mixed-Income Neighborhoods***

Support mixed-income housing by encouraging affordable housing in high-cost areas and market rate housing in low-income areas. Identify and implement measures that build in long-term affordability, preferably permanent or for the life of the project, to minimize displacement and achieve a balance of housing opportunities across the District. (CP § 504.18)

- ***Action H-1.2.E: Leveraging Inclusionary Zoning***

Review and consider expansion of the Inclusionary Zoning program as needed to encourage additional affordable housing production throughout the District. Examine and propose greater IZ requirements when zoning actions permit greater density or change in use. Factors supporting a greater requirement may include high-cost areas, proximity to transit stations or high-capacity surface transit corridors, and when increases in density or use changes from production, distribution, and repair (PDR) to residential or mixed-use. Consider requirements that potentially leverage financial subsidies, such as tax-exempt bonds. (CP § 504.26)

- ***Policy H-1.3.2: Tenure Diversity***

Encourage the production of both renter- and owner-occupied housing, including housing that is affordable at low-income levels, throughout the District. (CP § 505.9)

- ***Policy H-1.5.1: Land and Building Regulations***

Ensure the District's land regulations, including its housing and building codes, zoning regulations, construction standards, and permitting fees, enable the production of housing for all income groups. Avoid regulations that make it prohibitively expensive or difficult to construct housing. (CP § 507.2)

OAG requests that the Zoning Commission set this petition for a proposed text amendment down for a public hearing and is prepared to respond to any questions or concerns of the Commission.

Respectively submitted,

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PROPOSED TEXT AMENDMENT

The proposed revisions to the text of the Zoning Regulations are as follows – text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** text.

Subsection 1003.7 of § 1003, SET-ASIDE REQUIREMENTS, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:

1003.7 Except as provided in Subtitle C §§ 1003.8 through 1003.10, Inclusionary Zoning resulting from the set-asides required by Subtitle C §§ 1003.1 through 1003.4 shall be reserved for households earning equal to or less than:

(a) ~~Sixty~~ **Fifty** percent (~~60~~ **50**%) of the MFI for rental units; **provided that:**

(i) **At least one of the required Inclusionary Units shall be reserved for households earning equal to or less than thirty percent (30%) of the MFI; and**

(ii) **This set-aside may be reduced by the square footage equal to the lesser of the average or median square footage of the Inclusionary Units in the Inclusionary Development for every two (2) Inclusionary Units reserved for households earning equal to or less than thirty percent (30%) of the MFI, not including the required first 30% MFI Inclusionary Unit; and**

(b) ~~Eighty~~ **Seventy** percent (~~80~~ **70**%) of the MFI for ownership units; **provided**

that this set-aside may be reduced by the square footage equal to the lesser of the average or median square footage of the Inclusionary Units in the Inclusionary Development for every two (2) Inclusionary Units reserved for households earning equal to or less than fifty percent (50%) of the MFI;

APPENDIX – EXISTING LANGUAGE

Subsection 1003.7 of § 1003, SET-ASIDE REQUIREMENTS, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES

1003.7 Except as provided in Subtitle C §§ 1003.8 through 1003.10, Inclusionary Zoning resulting from the set-asides required by Subtitle C §§ 1003.1 through 1003.4 shall be reserved for households earning equal to or less than:

- (a) Sixty percent (60%) of the MFI for rental units; and
- (b) Eighty percent (80%) of the MFI for ownership units.