



**OAG TEXT AMENDMENT PETITION TO THE ZONING COMMISSION**  
**Z.C. CASE NO. 21-XX - OFF-SITE INCLUSIONARY ZONING COMPLIANCE CRITERIA**  
**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 § 1003.6

OAG’s proposed [text amendment](#) would require an application seeking to move the required Inclusionary Zoning (“IZ”) units off-site provide a significantly increased affordable housing benefit with:

- At least 20% more IZ units;
- Deeper affordability for at least 20% of the required IZ units; or
- Family-sized units with three or more bedrooms for at least 20% of the required IZ units.

**JUSTIFICATION**

OAG’s proposed text amendment would strengthen the IZ program by ensuring that a proposed removal of IZ units from a development site that would otherwise be detrimental to the IZ program’s principle of including affordable housing with market rate housing in a mixed-income development is balanced out by providing a greater affordable housing benefit in the off-site development.<sup>1</sup>

In evaluating the original IZ program, the Office of Planning (“OP”) declared that “the central public policy goal that can be achieved through Inclusionary Zoning is diverse neighborhoods” as providing on-site affordable units furthers the IZ program’s objective of creating mixed-income neighborhoods and de-concentrating poverty.<sup>2</sup> In adopting the IZ implementation program, the Council of the District of Columbia identified the IZ program as a key tool to maintain and foster inclusive, mixed-income neighborhoods vital to the District’s strength.<sup>3</sup> The updated Comprehensive Plan (Title 10A of the DCMR, the “CP”) calls for the District to become a more inclusive and equitable city and identifies rapidly rising housing costs and income inequality as central challenges to achieving this goal. An inclusive city requires new affordable housing throughout the District, in all neighborhoods (CP §§ 201.1, 204.15, 213.6, 219.4, 220.5, 220.7).

<sup>1</sup> This proposed extra benefit to balance out off-site IZ compliance is similar to rules adopted in other jurisdictions, including Montgomery County, Maryland (Mont. Co., MD, Code § 25A-5B, *Alternative location agreement*).

<sup>2</sup> [Office of Planning April 24, 2006, Report, Z.C. Case No. 04-33 \(IZ\), Ex. 194](#), p. 5; [Office of Planning Preliminary Report, Z.C. Case No. 04-33 \(IZ\), Ex. 20](#), pp. ix, 19, 30, 56.

<sup>3</sup> [Committee Report on B16-779, Inclusionary Zoning Act of 2006 \(D.C. Law 16-275\)](#).

Despite the importance of including affordable housing within market-rate developments, the current IZ regulations authorize off-site compliance if approved by the Board of Zoning Adjustment as necessary to avoid economic hardship and provided that the off-site IZ units comply with IZ requirements and do not receive District or Federal subsidies (Subtitle C § 1006).

OAG proposes to require an additional affordable housing benefit when IZ units are placed off-site to compensate for the loss of inclusive affordable housing and address the District’s affordable housing crisis acknowledged by the CP (CP § 220.5). Although the Mayor issued a 2019 order<sup>4</sup> that established a goal of producing 12,000 new affordable units and a total of 36,000 total new residential units in the District by 2025, the District continues to fall behind in affordable housing. The 3,137 affordable units produced between January 2019 and October 2021 are short of the roughly 4,800 affordable units needed in those 34 months to meet the 2025 goal (26% of the goal in 40% of the time<sup>5</sup>). This pace – approximately 92 affordable units a month – is a decline from the roughly 111 affordable units per month created between 2015 and 2018, for a total of 5,352 affordable units (CP § 206.11).

OAG’s proposed text amendment would define a “greater affordable housing benefit” to include not only an increased number of off-site IZ units, but also a deeper affordability level for the off-site IZ units or larger family-sized off-site IZ units than required for on-site IZ compliance because these benefits address critical affordable housing needs.

Providing IZ units at 30% of the MFI as an additional affordable housing benefit would address the important need for affordable housing for extremely low-income households. The updated CP recognizes this need and calls for 40% of new affordable units to be reserved at 30% of the MFI (CP § 206.8, 504.8, 504.19, 504.20, 504.21). The updated CP chronicles the dramatic changes to the demography and economic circumstances of the District’s residents:

- Between 2005 and 2017, the loss of less expensive housing coupled with the District’s increased median family income (“**MFI**”) resulted in the disappearance of almost a third of rental units affordable to households earning less than 50% of the (CP § 206.5);
- These lost units coincided with the dramatic rise in the District’s population – by more than 100,000 between 2010 and 2019<sup>6</sup> – made up of largely of higher-wage households, with 37,600 households earning more than 120% of the MFI moving into the District between 2006 and 2017, while 15,600 households earning less than 80% of the MFI left the District during the same time (CP §§ 206.8, 206.9, 504.1);
- As a result, the District’s inflation-adjusted MFI increased by almost 60% - from \$81,525<sup>7</sup> to \$129,000<sup>8</sup> – between the Commission’s creation of the IZ program in 2006 and 2021, causing a corresponding significant jump in housing costs for an IZ unit over that same time; and
- 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

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<sup>4</sup> [Mayor’s Order 2019-36 \(May 10, 2019\)](#).

<sup>5</sup> [DMPED’s “Economic Intelligence Dashboard.”](#)

<sup>6</sup> [Mayor’s Order 2019-36 \(May 10, 2019\)](#).

<sup>7</sup> [Office of Planning Preliminary Report, Z.C. Case No. 04-33 \(IZ\), Ex. 20](#), p. 18.

<sup>8</sup> [DMPED/DHCD IZ Maximum Income, Rent, and Purchase Price Schedule, effective June 25, 2021](#).

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).

Despite these changes, the IZ MFI income levels have not been lowered to reflect this dramatic increase in MFI combined with the steep loss in affordable units.<sup>9</sup> 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).

Similarly, considering larger family-sized IZ units as a greater affordable housing benefit has been a theme from the 2006 creation of the IZ program.<sup>10</sup> The District-commissioned 2019 study by the Urban Institute and the Coalition for Nonprofit Housing & Economic Development<sup>11</sup> determined that family-sized affordable units are particularly needed because:

- Three quarters of the District’s family-sized units are in single-family homes, which are often on larger lots and so command higher prices, putting them beyond the reach of most low-income households;
- Three-quarters of the District’s family-sized units are owner-occupied/for sale units that are out of reach for most low-income households;
- Family-sized units produce less rent per square foot than smaller units and so are more expensive to operate; and
- By 2045, the District is anticipated to gain an additional 14,000 - 19,000 additional households needing family-sized units, of which 4,000 - 7,500 households are likely to be earning below 50% of the MFI, with many earning less than 30% of the MFI.

The updated CP confirms the need for three-bedroom-plus units and notes that the lack of affordable family-sized units has contributed to displacement of existing residents, primarily families with children, lower income residents and residents of color (CP §§ 206.2, 500.29-30, 500.33, 505.6). The Commission recently adopted a text amendment ([Z.C. Case No. 20-02](#)) that incentivizes family-sized IZ units by offering a 20% reduction in the IZ set-aside requirement under certain circumstances (Subtitle C § 1003.9(c)).

#### **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). Furthermore, the proposed text amendment would further specific CP policies including:

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

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<sup>9</sup> In [Z.C. Case No. 04-33G](#), the Commission consolidated the MFI for rental IZ units at 60% MFI instead of the earlier one-half at 50% MFI and one-half at 80% MFI.

<sup>10</sup> [Office of Planning April 24, 2006, Report, Z.C. Case No. 04-33 \(IZ\), Ex. 194](#), p. 5.

<sup>11</sup> [P. Tatian, L. Hendy, and S. Brutong, An Assessment of the Need for Large Units in the District of Columbia, June 2019](#).

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 Page 19 of 63 opportunity and outcomes. (CP § 503.10)

- ***Policy H-1.1.9: Housing for Families***

Encourage and prioritize the development of family-sized units and/or family sized housing options which generally have three or more bedrooms, in areas proximate to transit, employment centers, schools, public facilities, and recreation to ensure that the District's most well-resourced locations remain accessible to families, particularly in areas that received increased residential density as a result of underlying changes to the Future Land Use Map. Family-sized units and/or family-sized housing options include housing typologies that can accommodate households of three or more persons and may include a variety of housing types including townhomes, fourplexes and multi-family buildings. To address the mismatch between meeting the needs of larger households and the financial feasibility of developing family-sized housing, support family-sized housing options through production incentives and requirements that address market rate challenges for private development that may include zoning, subsidies or tax strategies, or direct subsidy and regulatory requirements for publicly owned sites. (CP § 503.11)

- ***Action H.1.1.C: 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 and evaluating housing concepts that emphasize permanent affordability, such as social housing and community land trusts. 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 § 503.14)

- ***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 § 504.19)
- ***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-1.3.1: Housing for Larger Households***  
Increase the supply of larger family-sized housing units for both ownership and rental by encouraging new and retaining existing single-family homes, duplexes, Page 30 of 63 row houses, and three- and four-bedroom market rate and affordable apartments across Washington, DC. The effort should focus on both affordability of the units and the unit and building design features that support families, as well as the opportunity to locate near neighborhood amenities, such as parks, transit, schools, and retail. (CP § 505.8)
- ***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)
- ***Action H-1.3.A: Create Tools for the Production and Retention of Larger Family-Sized Units in Multi-Family Housing***  
Research land use tools and techniques, including development standards, to encourage the development of residential units that meet the needs of larger families, with a focus on financing affordable units in high-cost areas. (CP § 505.14)
- ***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 1006.3 of § 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

- 1006.3 An applicant 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 residential 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~~ **Complies** with all ~~on-site applicable~~ 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 no fewer inclusionary units or total square footage devoted to inclusionary units than required for the on-site development;**

**(g) Will provide a greater affordable housing benefit than required for the on-site development, by:**

**(i) Providing at least one additional Inclusionary Unit, and at least twenty percent (20%) more Inclusionary Units than required for on-site compliance, with a square footage equal or exceeding the size of the Inclusionary Units required for on-site compliance; or**

**(ii) Reserving at least one Inclusionary Unit, and at least twenty percent (20%) of the Inclusionary Units required for on-site compliance, for households earning equal to or less than thirty percent (30%) of the MFI for rental units, or sixty percent (60%) of the MFI for ownership units;**

**(iii) Providing at least one Inclusionary Unit, and twenty percent (20%) of the Inclusionary Units required for on-site compliance, with three or more bedrooms;**

**(f) (h) Will provide inclusionary units with gross floor area for each unit type of not less than ninety-five percent (95%) of the gross floor area of the off-site market-rate unit types of the off-site development, and of a number no fewer than the number of units that would otherwise have been required on-site; and**

**(g) (i) Will not have more than thirty percent (30%) of its gross floor area occupied by ~~inclusionary units~~ Inclusionary Units, not including the additional square footage provided pursuant to paragraph (g) of this subsection, unless the applicant demonstrates to the satisfaction of the Board of Zoning Adjustment that providing a greater square footage of Inclusionary Units in the off-site development would further the principles of the Inclusionary Zoning program by increasing affordable housing in a neighborhood (the square in which the off-site development is located and all abutting squares) in which Inclusionary Units constitute less than thirty percent (30%) of the total residential units.**

Appendix – Existing Language

**Subsection 1006.3 of § 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES**

- 1006.3 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 residential 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 with gross floor areas for each unit type of not less than ninety-five percent (95%) of the gross floor area of the off-site market-rate unit types, and of a number no fewer than the number of units that would otherwise have been required on-site; and
  - (g) Will not have more than thirty percent (30%) of its gross floor area occupied by inclusionary units.