

## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** <sup>JLS</sup>  
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**DATE:** December 11, 2020

**SUBJECT:** Status Report - Update on Zoning for Additional Inclusionary Housing Opportunities (“IZ XL”).

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### **I. INTRODUCTION**

At its November 19, 2020 public meeting, the Zoning Commission (“Commission”) discussed with the Office of Planning (“OP”) possible amendments to the Zoning Regulations (“Regulations”) to provide additional opportunities for inclusionary housing to be developed. The Commission asked OP to review the existing Inclusionary Zoning (“IZ”) program and provide recommendations on how the IZ regulations can be amended to require additional IZ units, particularly in those zones or properties that are exempt from the current regulations.

Since that meeting, OP has heard from a few stakeholders about ways to increase the supply of inclusionary housing. OP has also heard from stakeholders with concerns about potential impacts of applying IZ to exempt Downtown zones. This memorandum serves to provide both a summary of where IZ applies and an update on proposed next steps.

### **II. SUMMARY PROPOSAL**

OP recommends a progressive process that proceeds with amendments to apply the IZ regulations to 1) those areas within historic districts and to conversions from non-residential to residential, and 2) to updating the set-aside relative to construction type as the first phase of amendments while 3) simultaneously working with stakeholders on a careful and full analysis of the D zones, including economic modeling.

Due to the complexity of the D zones and their extended history from the Downtown Development District, inclusion of transferrable development rights (TDR), specific bonus density for preferred uses and housing requirements that date back to 1990, it is important that the D zones be carefully considered. The D zones do not have an easy ability to absorb the bonus density anticipated as an offset for inclusionary zoning in the original 2007 case. The issue was considered in the 2005

setdown report: *In mandatory situations where bonus density cannot be granted, such as the DD, policy questions arise around whether a smaller amount of affordable housing should be required and/or whether a longer market adjustment period should be built-in.* Each of these options require careful analysis.

Issue	Setdown
Historic District properties <ul style="list-style-type: none"><li>• R-3 in the Anacostia Historic District;</li><li>• MU-13 in the Georgetown Historic District; and</li><li>• NC-6 in the Capitol Hill Historic District</li></ul>	January 2021
Set-aside Requirements and Construction Type	January 2021
Conversions of Non-residential Buildings to Residential Buildings	February 2021
D Zones	April/May 2021

### III. HISTORIC DISTRICTS PROPERTIES

**Background:** The zones in the following historic districts are exempt from the IZ program:

- R-3 in the Anacostia Historic District;
- MU-13 in the Georgetown Historic District; and
- NC-6 in the Capitol Hill Historic District.

At the time of the adoption of the IZ program, these zones were exempted from an IZ requirement and bonus density because there was a concern that the use of IZ bonus density may have an impact on historic neighborhood scale and character in these historic districts.

A preliminary review of these areas indicate that buildings can be designed to be compatible with the historic district and issues with historic scale and character would be resolved through the design review process. Development in these areas would continue to be subject to the requirements of the Historic Preservation Act and reviews by the Historic Preservation Review Board.

**Actions:** Develop a text amendment proposal to make the IZ program apply to the R-3 zones in the Anacostia Historic District, the MU-13 zone in the Georgetown Historic District, and the NC-6 zone in the Capitol Hill Historic District;

**Timeline:** Set down in January 2021.

### IV. SET-ASIDE REQUIREMENT AND CONSTRUCTION TYPE

**Background:** The existing IZ program has two different set-aside requirements to take into account the type and cost of construction. The current set-aside requirement are as follows:

<b>Construction Type:</b>	Non-Type 1 Construction (Stick Built)	Type 1 Construction (Concrete and Steel)
<b>Zoning Height Limit:</b>	50 feet or less	Greater than 50 feet
<b>Set-Aside Requirement:</b>	Greater of: <ul style="list-style-type: none"><li>• 10% of residential GFA; or</li><li>• 75% of utilized bonus density (up 12.5% set-aside)</li></ul>	Greater of: <ul style="list-style-type: none"><li>• 8% of residential GFA; or</li><li>• 50% of utilized bonus density (up 8.33% set-aside)</li></ul>

Since the adoption of the IZ program, changes in building code and technology are allowing stick built construction as tall as 85 feet. Increasing the height threshold as it relates to construction type and the set-aside requirement would result in potentially more IZ units because it will not adversely affect the economic balance that could result in fewer overall units.

**Actions:** Develop a text amendment proposal to increase the zoning height limit threshold from 50 feet to 85 feet as it relates to type of construction and the corresponding set-aside requirement.

**Timeline:** Set down in January 2021.

#### **IV. NON-RESIDENTIAL TO RESIDENTIAL CONVERSIONS**

**Background:** Non-residential buildings converted to residential buildings with 10 or more dwelling units are exempt from the IZ program if there is no new gross floor area proposed beyond what already exists. This exemption is typically thought of in the context of an office building being converted to a residential building, but the exemption is for any non-residential use converted to a residential use, including hotels and warehouses.

At the time the IZ program was adopted, there was a concern that applying an IZ requirement to such conversions would disincentivize conversion to residential use and could result in less housing developed overall. Many office buildings are already built to their maximum building envelope permitted either by zoning or the Height Act, which means that there is no further bonus density that could be provided.

For non-residential building conversions to residential use that are not built to their maximum building envelope, the IZ requirements apply to the whole building when there is 10 or more dwelling units and where the building either utilizes the IZ bonus density or increases the existing gross floor area by 50% percent or more. When there is no use of bonus density and no increase in existing gross floor of 50% percent or more, the IZ requirements only apply to the new floors of the building.

The initial IZ analysis, when looking at holding land value constant, did not analyze change in uses, not only because there was not bonus density, but also because the interplay of values between office and residential is dynamic, complex, and quite specific to neighborhoods and even parcels. This proposal recognizes that there are going to be instances, likely outside of the core, where such conversions happen, and we want to ensure that we are not behind changing market dynamics. We

want to do this while minimizing the disincentives for conversion, which may mean calibrating the trigger point, the GFA calcs, and the percentage requirements appropriately.

In many cases outside the D zones, there is potentially very little functional difference between building with new construction versus converting an existing non-residential use such as office or hotel. This is because most MU zones limit non-residential uses to well below the total permitted for residential. An existing structure being considered for conversion represents a depreciated asset that needs investment and a change of use to maximize its total potential value. The main factor is whether the existing building can be expanded. If the existing building is not economically viable than the project could entail demolition, building new, and IZ should apply. If the structure is sufficient for additions, then IZ currently applies to the new construction, but it is worth investigating if IZ should apply to the whole structure.

**Actions:** Develop a text amendment proposal to apply the IZ program to non-residential buildings converted to residential use.

Investigate the potential to change the current unit threshold from ten (10) units to a lower threshold and lower the 50% expansion threshold for buildings where there is opportunity to increase the size of the building and use a bonus density to increase the overall number of required IZ units.

**Timeline:** Set down in February 2021.

## V. EXEMPT D ZONES

**Background:** Downtown zones were originally not subject to the IZ requirements<sup>1</sup> (Case ZC No. 04-33) because there was no bonus density to balance the affordability requirements due to the Height Act. IZ requirements without bonus density were documented to reduce land values by 20 percent at the time of original consideration.

The 2020 Comprehensive Plan amendments include a policy statement in the Central Washington Planning Area Element below (bold text provided for emphasis).

### Policy CW-1.1.5: Central Washington Housing Diversity

It is important to keep Central Washington a mixed-income community and avoid the displacement of lower-income residents. Preserve Central Washington's existing low-to moderate-income housing, including public housing, housing (-both contracts and vouchers), - and other subsidized units. The District has taken a proactive approach to preserving affordable units at the Museum Square, Golden Rule, and other Central Washington Area redevelopment sites. **The District should continue to expand the number of affordable units through land disposition with affordability requirements and through the use of zoning and other regulatory incentives.**

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<sup>1</sup> The following D zones currently require compliance with the IZ program: D-2, D-4, and D-8 zones.

The Commission specifically asked about Design Review. These sites are within the D zones and will be part of the D zone analysis. Design review is required in a limited area of the D zones along the following street frontages:

- M Street, SE and SW and South Capitol Street, which is zoned either D-4 or D-5,
- North Capitol Street which is zoned either D-3, D-4, or D-5, and
- Independence Avenue, SW which is zoned either D-4 or D-8.

The D-4 and D-8 zones are subject to IZ.

Of these street frontages that require design review, only those properties zoned D-3 or D-5 are currently exempt from the IZ program, which is about half of the total area designated for design review. OP estimates that of the properties zoned D-5 and require design review, there are six substantial sites on South Capitol Street that are reasonable prospects for near/mid-range applications for Commission review.

The other half of the total area designated for design review is subject to compliance with the IZ program because these properties are zoned either D-4 or D-8.

Applying IZ requirements without full analysis has the potential to disrupt the production of market rate housing in Central Washington. In addition, the current crisis is causing a great deal of disruption to this planning area's overall real estate market, which makes it hard to predict the impacts of a change in policy to an area that is a critical driver of DC's economy. Given the level of potential downside risks to the District's office market, it would be very difficult to conduct reasonably reliable economic modeling so quickly. Distribution of the COVID-19 vaccine will afford insights into how the public health crisis has changed the structure of the District's economy.

OP is proceeding with due caution and researching potential avenues to apply IZ to the D zones.

**Actions:** OP will continue to research potential avenues to apply IZ to the D zones and will conduct an economic analysis to the D zones for both office and housing that is similar to the one completed for IZ Plus. A concept proposal would be developed for consideration by the Zoning Commission.

Investigation of options include:

- Phasing IZ requirements over a several year period;
- Mapping of housing requirements and use of Housing Credits (1958 Combined Lot) to tie the land values of residential and commercial uses together;
- Allocating housing credits/TDRs to incentivize early adopters of the IZ requirements;
- Calibrating the percentage requirements

**Timeline:** Set down in April-May 2021.

### **Southeast Federal Center (SEFC)**

The Commission asked for the details of the affordable housing requirement for SEFC.

In the SEFC zones, twenty percent (20%) of all rental residential units are required to be affordable for households earning no more than 50% of the MFI (Medium Family Income). Additionally, in Parcels A, F and G, eight percent (8%) of the additional density above 6.0 FAR shall be three-bedrooms set aside for households earning no more than 50% of the MFI. OP does not anticipate any change to the SEFC affordable housing requirements.