

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**AND**

**Z.C. ORDER NO. 04-33D**

**Z.C. Case No. 04-33D**

**(Text Amendment – Inclusionary Zoning Exemption for Federal and District Funded and  
District Administered Affordable Housing Developments)**

**January 10, 2011**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01) hereby gives notice that it took final rulemaking action to adopt amendments to §§ 2602, 2604, and 2605 of the Zoning Regulations (Title 11, DCMR).

The amendments exempt projects 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 from the Inclusionary Zoning (“IZ”) provisions of Chapter 26 of the Zoning Regulations. As a result of this exemption, such projects will also be exempted from the entire IZ Program, which includes those implementing provisions added by the Council of the District of Columbia through its enactment of the Inclusionary Zoning Implementation Amendment Act of 2006 and by the Office of the Deputy Mayor for Planning and Economic Development through its adoption of Chapter 22 of Title 14 of the DCMR.

**Procedures Leading to Adoption of Amendments**

The Office of Planning (“OP”), in a report dated July 16, 2010, petitioned the Commission for a text amendment to exempt certain federal and District Government funded projects from the provisions of Chapter 26 of the Zoning Regulations.

At its regular public meeting held July 26, 2010, the Commission set down this case for a public hearing and adopted the proposed text on an emergency basis.

The Commission also authorized the publication of a notice of proposed rulemaking together with a notice of the adoption of the emergency rule.

The advertised amendments allowed for the expiration of an exempted development’s affordability controls once the requirements established by the federal or District funding source expired. Exempted projects that voluntarily agreed to become permanently subject to IZ once

the federal or District controls expired could utilize the bonus density and other forms of development flexibility afforded IZ developments.

A properly noticed public hearing was held on October 21, 2010.

At the close of the hearing, the Commission indicated that it would accept OP's recommendation to change the minimum set aside for exempted projects from 80% of its units to the minimum that would have been required had IZ applied. However, the Commission declined to take proposed action because it had come to agree with several of the witnesses that this minimum number of units should not revert to market rate housing after the federal or District controls expired. Instead, the Commission decided that such units should remain affordable for as long as the project existed, as would have been required under IZ. The Commission requested that OP, the Office of the Attorney General, and DHCD provide revised text to accomplish this.

This revised text was presented to the Commission through OP's Supplemental Post Public Hearing Report dated November 1, 2010. As revised, the proposed amendments would permanently exempt from IZ affordable developments financed, subsidized, or funded in whole or in part by the federal or District government if they are administered by specified District agencies. The exempted developments must agree to set aside for the life of the project units that would at least equal IZ's square footage requirement. The units would not become subject to the IZ price schedule or its administrative process, but would continue to be governed by their original affordability structure for the life of the project – i.e., even after the federal or District affordability restrictions have expired. DHCD would continue to monitor compliance with these requirements and take enforcement actions if a violation occurred.

Because this text substantively differed from the emergency rule that was due to expire on October 23<sup>rd</sup>, the Commission adopted the revised text on an emergency basis on November 8, 2010 and also authorized the referral of the proposed amendments to the National Capital Planning Commission ("NCPC") and the publication of a second notice of emergency and proposed rulemaking in the *D.C. Register*.

NCPC, through a delegated action dated November 24, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 19.)

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 26, 2010, at 57 DCR 11347. No comments were received.

At its regularly scheduled public meeting held on January 10, 2010, the Commission took final action to adopt the text amendments. At the recommendation of the Office of the Attorney General, the Commission struck proposed § 2604.4 because its subject matter was more completely addressed by proposed § 2602.9.

The Zoning Regulations, Title 11 DCMR, Chapter 26, INCLUSIONARY ZONING, is amended as follows:

Section 2602, **APPLICABILITY**, is amended as follows:

Subsection 2602.3 is amended by adding a new paragraph (f) so that the entire provision will read as follows:

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;
- (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;
  - (5) The C-2-A zoned portion of the Naval Observatory Precinct District; and
  - (6) The Eighth Street Overlay; and
- (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.

New §§ 2602.7 through 2602.9 are added to read as follows:

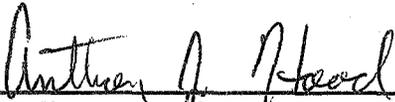
- 2602.7 A development exempted under § 2602.3 (f) shall be subject to the following provisions:
- (a) The development shall set aside, for low or moderate-income households, affordable dwelling units (“Exempt Affordable Units”) equal to at least the gross square footage that would have been required 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 Targeted 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.

Section 2605, **DEVELOPMENT STANDARDS**, is amended by repealing § 2605.1.

On November 8, 2010, upon motion of Vice Chairman Schlater, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the conclusion of the public hearing by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Peter G. May, and Michael G. Turnbull to approve).

On January 10, 2011, upon motion of Vice Chairman Schlater, as seconded by Commissioner Selfridge, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become effective upon publication in the *D.C. Register*; that is on January 28, 2011.



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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION



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JAMISON L. WEINBAUM  
DIRECTOR  
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 04-33D

FEB 3 2011

As Secretary to the Commission, I hereby certify that on FEB 3 2011 copies of this Z.C. Order No 04-33D were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. All ANCs (see attached)
3. All Councilmembers (see attached)
4. Gottlieb Simon  
ANC  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004
5. DDOT (Karina Ricks)
6. Melinda Bolling, Acting General Counsel  
DCRA  
1100 4<sup>th</sup> Street, S.W.  
Washington, DC 20024
7. Office of the Attorney General (Alan  
Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S. Schellin  
Secretary to the Zoning Commission  
Office of Zoning