

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Registrar of the Department of Health, pursuant to the authority set forth in §§ 26 and 27 of the Vital Records Act of 1981 ("Act"), effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code §§ 7-225 and 226), hereby give notice of her intent to adopt the following amendments to Chapter 36 of Title 16 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty days from the date of publication of this notice in the *D.C. Register*. The purpose of the proposed rule is to establish civil fines for violations of the Act.

Pursuant to D.C. Official Code § 2-1801.04(a)(1), the proposed rules will be submitted to the Council of the District of Columbia for review and approval. This rule will become effective upon Council approval, or sixty (60) days after submission, if the Council has not disapproved the proposed rulemaking, and publication of the final rules in the *D.C. Register*.

This rule will add a new § 3614 of Title 16 of the District of Columbia Municipal Regulations by establishing the schedule of fines for violations of D.C. Official Code § 7-201 *et seq.* related to vital records requirements.

Section 3614 of Title 16 (Consumers, Commercial Practices & Civil Infractions) (July 1998) of the District of Columbia Municipal Regulations is amended to read as follows:

3614 VITAL RECORDS INFRACTIONS

3614.1 Violation of any of the following provisions shall be a fine of two hundred dollars (\$200):

- (a) D.C. Official Code § 7-211(b) (failure of a funeral director or person acting as such to file a death record within five (5) days after death and before final disposition);
- (b) D.C. Official Code § 7-211(d) (failure of a medical facility to return the medical certification portion of a death certificate to the funeral director within forty-eight (48) hours after death);
- (c) D.C. Official Code § 7-213(a) (failure of an institution to report a fetal death within five (5) days after the death);
- (d) D.C. Official Code § 7-205(a) (failure to file a record of birth within five (5) days after the birth);

- (e) D.C. Official Code § 7-223(b) (failure of an institution to submit by the tenth (10th) day of the month a list of each birth and death occurring in that institution during the preceding month.); and
- (f) D.C. Official Code § 7-223(c) (failure of a funeral director to submit, by the tenth (10th) day of the month, a list of each dead body disposed of during the preceding month.).

Persons desiring to comment on these proposed rules should submit comments in writing to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002, no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.

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

ZC Case No. 07-09

(Text Amendment – 11 DCMR)

Exemption from Certificate of Occupancy Timing Requirements

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), hereby gives notice of its intent to amend §§ 1706.13 and 1706.23(g) of the Zoning Regulations (Title 11 DCMR).

Both provisions govern the timing of certificates of occupancy for projects within a Downtown Development Overlay District Housing Priority Area that have either allocated their residential requirement through a combined lot development or reduced that requirement through constructing affordable housing offsite. Subsection 1706.13 disallows the issuance of a certificate of occupancy for a development (including a combined lot development) until a certificate of occupancy has been issued for the required residential use or an escrow is funded. When a development's residential requirement has been reduced through the off-site construction of affordable housing, § 1706.23(g) provides that the development may not be issued a certificate of occupancy until one is issued for the affordable housing created.

The amendments, if adopted, would permit an exception to both provisions when the required residential use is being allocated or the affordable housing is being constructed on District owned property.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 11 DCMR § 1706 is amended as follows. New text is shown **bold** and underlined:

1. Subsection 1706.13 is amended to read as follows:

- 1706.13 If a development project includes both nonresidential uses and required residential uses, whether on the same lot or in a combined lot development, no certificate of occupancy shall be issued for the nonresidential space until either:
- (a) A certificate of occupancy has been issued for the residential space; or
 - (b) An escrow account has been established and funded in a combined lot development pursuant to § 1708.2.

This provision shall not apply to nonresidential gross floor area resulting from a combined lot development that allocated an equivalent amount of the

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property's required residential uses to one or more lots then owned by the District government.

2. Subparagraph (g) of § 1706.23 is amended to read as follows:

- (g) No certificate of occupancy shall be issued for the nonresidential development within the DD Overlay District until a certificate of occupancy has been issued for the affordable dwelling units, **unless the affordable dwelling units are being constructed on property owned by the District of Columbia.**

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
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ZC Case No. 07-15

(Text Amendment – 11 DCMR)

Including Accessory Structures in the § 223 Special Exception

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), hereby gives notice of its intent to amend § 223 of the Zoning Regulations (Title 11 DCMR).

The purpose of the amendment is to allow special exception approval of construction or enlargement of detached garages and other accessory structures pursuant to § 223 of the Zoning Regulations. Section 223 currently permits special exception approval of additions to one-family dwellings and flats that do not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 of the Zoning Regulations.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 11 DCMR § 223 is amended as follows.

(New text is shown in **bold and underline** deleted text is shown with ~~strikethrough~~):

223 ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS
AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES

223.1 An addition to a one-family dwelling or flat, in those Residence districts where a flat is permitted, **or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure** ~~that~~ does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

223.2 The addition **or accessory structure** shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

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- (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and
- (d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.

223.3 The lot occupancy of all new and existing structures on the lot ~~the dwelling or flat, together with the addition,~~ shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.

223.4 The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties.

223.5 This section may not be used to permit the introduction or expansion of a non-conforming use.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
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Z.C. Case No. 04-33B

**(Text Amendment – Inclusionary Zoning – Addition of R-2 Zones, Standards for Certain
Overlays, and Clarifying Amendments)**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01), hereby gives notice of its intent to amend Chapters 11, 12, 13, 15, 16, 19, and 26 of the Zoning Regulations (Title 11 DCMR). If adopted, the amendments would subject properties in the R-2 zone district to the requirements of Chapter 26, Inclusionary Zoning (“IZ”), provide specific FAR, lot occupancy, density, and height flexibility for ten overlays, and make certain clarifications to the existing IZ text.

The Commission is proposing a maximum permitted height of 55 feet for those properties in the Eighth Street Southeast (ES) Commercial Overlay District that will be subject to IZ, but, in the alternative, is also proposing to continue to require those properties to conform to the current height limitation of 45 feet. The effect of the added height is depicted in two perspectives that appear on page 16 of the Office of Planning Report dated July 16, 2007, which show that IZ projects are likely to gain an additional floor. Although the Commission wishes to provide additional affordable housing within the ES Overlay, it is mindful that the Overlay was established to, among other things, “restrict ...heights to a low level so as to respect the historic scale of buildings and the entrance to the adjacent Navy Yard”, 11 DCMR § 1309.2 (b). The public’s view as to whether and how this balance can be achieved, including the advisability of upper-story step backs or similar controls, would be of particular interest to the Commission. The Commission also asked the Office of Planning to submit additional analysis of the proposals for this overlay.

As to the clarifying amendments, among the more significant revisions is text specifying that a project’s minimum set aside requirement will be based upon the amount of residential gross floor area to be constructed, rather than its entire gross floor area, while its maximum requirement will be based upon the amount of bonus density actually used. The proposed rules would also revise the effective date provision stated at 11 DCMR § 2608.1. Currently that provision makes the IZ regulations effective on the date that the first price/rental schedule is published. The amended rule would require compliance with IZ beginning 90 days after that date. Finally, the rules would add a new § 2608.2 to exempt a project approved as a planned unit development from IZ if the approved application was set down for hearing before the date that a final rulemaking for this case became effective, *i.e.* the date that the Notice of Final Rulemaking for this case is published in the *D.C. Register*.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

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The following rulemaking action is proposed:

Title 11 of the DCMR, ZONING, is amended as follows (new language shown in **bold** and underlined; deleted language in ~~strikethrough~~):

1. Chapter 11. HOTEL-RESIDENTIAL INCENTIVE OVERLAY DISTRICT, is, amended as follows:

a. Subsection 1101.7 is amended to read as follows:

1101.7 ~~In the HR Overlay District, the maximum permitted floor area ratio for hotels and apartment houses shall be eight and one-half (8.5).~~ **The following types of bonus density is available in the HR Overlay District:**

Base Zone	<u>IZ Bonus</u>		
	<u>Maximum Height</u>	<u>Lot Occupancy</u>	<u>Bonus FAR</u>
Hotel Residential			
C-3-C	<u>§1101.6(a)</u>	<u>100%</u>	<u>20%</u>
SP-2	<u>§1101.6(a)</u>	<u>80%</u>	<u>20%</u>
Use	<u>General Bonus</u>		
	<u>Maximum Height</u>	<u>Lot Occupancy</u>	<u>Bonus FAR</u>
<u>Hotel and Apartment House</u>	<u>0</u>	<u>0</u>	<u>2.0</u>

b. By adding new §§ 1101.8 and 1101.9 to read as follows:

1101.8 **Any use of the bonus density provided for in §1101.7 shall be deemed to first utilize the IZ bonus.**

1101.9 **Use of the general bonus shall not count towards the set-aside requirements of §2603.**

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2. Chapter 12. CAPITOL INTEREST OVERLAY DISTRICT, is, amended by adding a new § 1204, to read as follows:

1204 **INCLUSIONARY ZONING**

1204.1 **Notwithstanding the requirements of §1203.1 and §1203.3, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the CAP Overlay's height, lot occupancy and FAR:**

- (a) **In the CAP/R-5-B, CAP/C-2-A, and CAP/SP-1 Overlay Districts:**
- (i) **The floor area ratio for new construction shall not exceed 2.16 FAR**
- (ii) **The maximum building height shall not exceed forty (40) feet**
- (b) **In the CAP/R-5-B, and CAP/C-2-A Overlay Districts:**
- (i) **The lot occupancy shall not exceed seventy-five percent (75%);**
- (c) **In the CAP/R-4 base zone:**
- (i) **The minimum lot size shall be 1,500 square feet; and**
- (ii) **The minimum lot width shall be fifteen (15) feet.**

3. Chapter 13. COMMERCIAL NEIGHBORHOOD OVERLAY DISTRICT, is, amended as follows:

- a. Section 1306, Cleveland Park Neighborhood Commercial Overlay District, is amended by adding a new § 1306.8 to read as follows:

1306.8 **Notwithstanding the requirements of §1306.6 and §1306.7, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the CP Overlay's height, lot occupancy, and floor area ratio restrictions:**

- (a) **The maximum building height shall not exceed forty-five (45) feet.**
- (b) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- (c) **The floor area ratio shall not exceed 2.4 FAR.**

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- b. Section 1307, Woodley Park Neighborhood Commercial Overlay District, is amended by adding a new § 1307.8 to read as follows:

1307.8 **Notwithstanding the requirements of §§1307.6 and 1306.8, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the WP Overlay's height, lot occupancy, and floor area ratio restriction:**

(a) **In the WP/C-2-A Overlay District:**

- (i) **The maximum building height shall not exceed fifty (50) feet;**
- (ii) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- (iii) **The floor area ratio shall not exceed 3.0 FAR.**

(b) **In the WP/C-2-B Overlay District:**

- (i) **The maximum building height shall not exceed fifty-five (55) feet;**
- (ii) **The lot occupancy shall not exceed eighty percent (80%); and**
- (iii) **The floor area ratio shall not exceed 3.6 FAR.**

- c. Section 1309, Eighth Street Southeast Neighborhood Commercial Overlay District, is amended by adding a new § 1309.8 to read as follows:

1309.8 **Notwithstanding the requirements of §§1309.6 and 1309.7, developments subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the ES Overlay's height, lot occupancy, and FAR restrictions:**

- (a) **The maximum building height shall not exceed fifty-five (55) feet;**
[as an alternative, the Commission proposes to require IZ developments to adhere to the 45 foot height limitation of § 1309.6.]
- (b) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- (c) **The floor area ratio shall not exceed 3.6 FAR.**

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d. Section 1310, Takoma Park Commercial Overlay District, is amended by adding a new § 1309.8 to read as follows:

1310.11 **Developments properties subject to the requirements of Chapter 26 may use the following modifications to height and lot occupancy in order to achieve the bonus density:**

- (a) **The floor area ratio for new construction shall not exceed 3.0 FAR;**
- (b) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- (c) **The maximum building height shall not exceed fifty-five (55) feet.**

e. The provisions of the H Street Commercial Overlay District by adding a new § 1327 to read as follows:

1327 **INCLUSIONARY ZONING (HS)**

1327.1 **Developments properties subject to the set-aside requirements of Chapter 26 Inclusionary Zoning may use the Height and Lot Occupancy and Bonus to Base Zone FAR in the following table: as the basis of calculating the set-aside requirements of §2603:**

Base Zone	IZ Bonus		
	Bonus FAR	Lot Occupancy	Maximum Height
H Street			
C-2-A	0.5	75%	50
C-2-B	0.7	80%	70
C-2-C	1.2	80%	100

1327.2 **The use of bonus density by a property also eligible to use the bonus provided for in § 1324.3 shall be deemed to first utilize the bonus authorized in § 1327.1.**

1327.3 **Use of the bonus authorized in § 1324.3 shall not count towards the set-aside requirements of § 2603. Bonus density achieved through § 1324.3 of the HS Overlay that is in addition to the above table shall not count toward the set-aside requirements of § 2603.**

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4. Chapter 15. MISCELLANEOUS OVERLAY DISTRICTS, § 1563, Height, Bulk, and Use Provisions (FT)¹, is amended by adding a new § 1563.4 to read as follows:

1563.6 Notwithstanding § 1563.4, overlay properties subject to the requirements of Chapter 26 Inclusionary Zoning may utilize, the following modifications to height lot occupancy, and FAR:

(a) In the FT/C-3-A Overlay District:

- (i) The floor area ratio for new construction shall not exceed 4.8 FAR;**
- (ii) The lot occupancy shall not exceed eighty percent (80%); and**
- (iii) The maximum building height shall not exceed sixty-five (65) feet.**

(b) In the FT/CR Overlay District:

- (i) The floor area ratio for new construction shall not exceed 6.0 FAR;**
- (ii) The lot occupancy shall not exceed seventy-five percent (75%); and**
- (iii) The maximum building height shall not exceed ninety (90) feet.**

5. Chapter 16. CAPITAL GATEWAY OVERLAY DISTRICT, § 1601, is amended to read as follows:

1601 BONUS DENSITY AND HEIGHT (CG)

1601.1 CG Overlay developments subject to the set-aside requirements of Chapter 26 Inclusionary Zoning may use the FAR, Height and Lot Occupancy in the following table as the basis of calculating the set-aside requirements of § 2603:

¹“(FT)” signifies that these provisions are applicable to properties located in the Fort Totten Overlay District.

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Base Zone	IZ Bonus		
	FAR	Lot Occupancy	Maximum Height
Capitol Gateway			
<u>C-2-C</u>	<u>7.2</u>	<u>80%</u>	<u>110</u>
<u>C-3-C</u>	<u>7.8</u>	<u>100%</u>	<u>90</u>
<u>CR</u>	<u>7.2</u>	<u>80%</u>	<u>100</u>
<u>W-1</u>	<u>3.0</u>	<u>80%</u>	<u>50</u>
<u>W-2</u>	<u>4.8</u>	<u>75%</u>	<u>80</u>
<u>W-3</u>	<u>7.2</u>	<u>75%</u>	<u>100</u>

Bonus density achieved via §§ 1601.2 or 1601.4 does not add to the set-aside requirements of § 2603.

- 1601.42 In the CG/CR and CG/W-3 Districts, a building or combined lot development shall be allowed a maximum density of ~~7.0~~ 8.2 FAR; provided that the additional 1.0 FAR in excess of ~~the matter of right maximum of 6.0~~ § 1601.1 FAR shall be devoted solely to residential uses, which, for the purposes of this subsection, does not include hotel uses.
- 1601.23 For the purpose of accommodating bonus density as authorized by § 1601.1, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §§ 6-601.01 to 6-601.09), as amended; provided that in Squares 601, 656, and 657 those lots abutting or separated only by a street or alley from residentially zoned property shall provide a one-to-one (1:1) building setback for any part of a building that exceeds ninety (90) feet in height on the side abutting the residential zone.
- 1601.34 In the CG/W-1 District, a building or combined lot development shall be allowed a maximum density of ~~3.5~~ 4.0 FAR and a maximum height of fifty-five (55) feet to accommodate the additional density. The additional 1.0 FAR in excess of ~~the matter of right maximum of 2.5~~ FAR §1601.1 shall be devoted solely to residential uses unless the building or the combined lot development includes at least 2.0 FAR of residential uses, in which case the additional 1.0 FAR may be devoted to any permitted use in the W-1 zone. For the purposes of this subsection, the term "residential uses" does not include hotel uses.

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6. Chapter 19. UPTOWN ARTS-MIXED USE OVERLAY DISTRICT, is, amended as follows:

a. Subsection 1904.1 is amended to read as follows

1904.1 A project shall be eligible for bonus gross floor area for space devoted to one of the preferred uses listed in §1904.2; provided:

- (a) Bonus density may be used either to increase the gross floor area of the building for any permitted use up to the maximum floor area ratio (FAR) specified in paragraph (b) of this subsection, or to provide nonresidential uses or development in excess of the otherwise applicable limitation on the gross floor area of nonresidential uses in the underlying zone district; and
- (b) No building that uses bonus density shall achieve a maximum FAR in excess of 6.0 in the underlying CR District, 4.5 in the underlying C-3-A and C-2-B Districts, or 3.0 in the underlying C-2-A District.
- (c) **No property subject to Chapter 26, Inclusionary Zoning, shall be eligible for bonus gross floor area unless it has met the set-aside requirements of § 2603 and used all the bonus density of available through §2604.**

b. Subsection 1905.1 (c) is amended to read as follows

1905.1 Two (2) or more lots may be combined for the purposes of transferring bonus density and allocating the permitted mixture of uses among development sites; provided:

- (c) Bonus floor area earned by the provisions of § 1904 may be developed on any lot or combination of lots governed by the covenant required by paragraph (f) of this subsection; provided, no development on any lot shall exceed the maximum height and bulk standards in §§ 1902 and 1904.1(b), **unless otherwise permitted by § 1909**; and provided further, the ground level uses required by § 1901.1 shall not be transferred, but shall be provided on each lot;

c. By adding a new § 1909 to read as follows:

1909 INCLUSIONARY ZONING

1909.1 ARTS Overlay developments subject to the affordability requirements of Chapter 26 Inclusionary Zoning may use the following modifications to height and lot occupancy in order to achieve the bonus density permitted by §2604.1:

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- (a) In the ARTS/C-2-A Overlay District:
- (i) The floor area ratio shall not exceed 3.0 FAR;
 - (ii) The residential lot occupancy shall not exceed seventy-five percent (75%); and
 - (iii) The building height shall not exceed fifty (50) feet.
- (b) In the ARTS/C-2-B Overlay District:
- (i) The floor area ratio shall not exceed 4.2 FAR;
 - (ii) The residential lot occupancy shall not exceed eighty percent (80%); and
 - (iii) The building height shall not exceed seventy (70) feet.
- (c) In the ARTS/C-3-A Overlay District:
- (i) The floor area ratio shall not exceed 4.8 FAR;
 - (ii) The residential lot occupancy shall not exceed eighty percent (80%); and
 - (iii) The maximum building height shall not exceed seventy-five (75) feet and shall be subject to the setback requirements of § 1902.1 (b).
- (d) In the ARTS/CR Overlay District:
- (i) The floor area ratio for new construction shall not exceed 7.2 FAR;
 - (ii) The residential lot occupancy shall not exceed eighty percent (80%); and
 - (iii) The maximum building height shall not exceed one-hundred (100) feet and shall be subject to the setback requirements of § 1902.2.

1909.2 Bonus density achieved via § 1904.2 does not add to the set-aside requirement of § 2603.

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7. Chapter 26. INCLUSIONARY ZONING, is, amended as follows:

- a. Section 2601, Definitions, is amended by striking the definition “Achievable bonus density” and amending the definitions of “the Act” and “Moderate-income household” to read as follows:

The Act – the Inclusionary Zoning Implementation Amendment Act of 2006, effective Mar. 14, 2007 (D.C. Law 16-275; 54 DCR 880). References to the Act include any Mayor’s Order, agency rule, or other administrative issuance promulgated pursuant to that legislation.

Moderate-income household - a household of one or more individuals with a total annual income adjusted for household size equal to between ~~fifty~~**one** percent (~~50~~ **51**%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

- b. Section 2602, Applicability is amended as follows:

(i) Subsection 2602.1 is amended by striking the term “R-3” and inserting the term “R-2” “in its place.

- (ii) Subsections 2602.5 and 2602.6 are amended to read as follows:

2602.5 An owner/occupant of an inclusionary unit may **not** sell the unit at a price greater than **that established by the Mayor pursuant to § 103 if the Act,** ~~maximum permitted under the purchase/rental schedule if~~ **unless** the price is offered by the Mayor **or a Housing Trust authorized by the Mayor.**

2602.6 No eligible household shall be offered an inclusionary unit for rental or sale at an amount greater than that established by the Mayor pursuant to § 103 of the Act.

- c. Subsections 2603.1 through 2603.3 are amended to read as follows:

2603.1 An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an **R-2** ~~R-3~~ through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of **the gross floor area being devoted to residential use** ~~its matter of right density or 75% of its achievable~~ **the** bonus density **being utilized** for inclusionary units.

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2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in §2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, W-2 or W-3 District shall devote the greater of 8% of the gross floor area being devoted to residential use its ~~matter of right density~~ or 50% of its ~~achievable~~ the bonus density being utilized for inclusionary units.

2604.3 Inclusionary developments in R-2 R-3 through and R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

<u>Base Zone</u>	<u>IZ Zoning Modifications</u>		
	<u>IZ Min. Lot Area (square feet)</u>	<u>Min. Lot Width (feet)</u>	<u>Min. Lot Width (feet) Special Exception</u>
<u>R-2 Detached</u>	<u>3,200</u>	<u>40</u>	<u>32</u>
<u>R-2 Semi-Detached</u>	<u>2,500</u>	<u>30</u>	<u>25</u>
<u>R-3</u>	<u>1,600</u>	<u>20</u>	<u>16</u>
<u>R-4</u>	<u>1,500</u>	<u>18</u>	<u>16</u>

d. Section 2606. Exemption from compliance is amended by striking the existing text and inserting the following new text in its place:

2606.1 The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) would deny the applicant economically viable use of its land.

2606.2 No application for a variance from the requirements of § 2603.2 may be granted until the Board of Zoning Adjustment has voted to deny an application for relief pursuant to this section or § 2607.

e. Section 2607 is amended to read as follows:

2607 OFF-SITE COMPLIANCE

2607.1 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of §2603 to be constructed off-site ~~on property owned by the applicant~~ upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

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- (a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households;
- (b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households; or
- (c) For a rental development the owner of which wishes to change the property's use to one listed in § 2602.3, proof that continuation of the rental use is no longer economically feasible.

2607.2 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 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; **and**
- (f) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site.;
- (g) **Will not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the BZA application; and**
- (h) **Has not utilized bonus density beyond that provided by § 2604.1**

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- 2607.3 The requirement of 2607.2 (a) may be waived upon a showing that the off-site development is owned by the Applicant, is located in the District of Columbia, and meets the requirements of § 2607.2.: ~~applicant; after good faith efforts, was unable to locate properties within the same census tract or that the costs to purchase and develop available properties would render both the inclusionary and off site projects economically infeasible.~~
- 2607.4 Inclusionary units constructed off-site shall not be counted toward any set-aside requirement separately applicable to the off-site development pursuant to § 2603.
- 2607.5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.

[The remainder of this section is unchanged.]

- f. Section 2608 is amended to read as follows:

The following language amends IZ's applicability date:

2608 APPLICABILITY DATE

- 2608.1 The provisions of §§ 2600 through 2607 of this Chapter as adopted by Zoning Commission Orders 04-33, ~~and 04-33A,~~ **and 04-33B** and all amendments made by Orders No. 04-33A **and 04-33B** to 11 DCMR **Chapters 1, 11 through 14, 15, 16, and 19** §§ 1402.1, 1904.2, and 1999.2 shall become effective ~~upon~~ **ninety (90) days after** the publication of the first purchase/rental schedule in the *D.C. Register*.
- 2608.2 The provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior [TO THE EFFECTIVE DATE OF THIS SUBSECTION.]**

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Washington D.C. 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.