

**THE DEPUTY MAYOR FOR PLANNING
AND ECONOMIC DEVELOPMENT**

NOTICE OF FINAL RULEMAKING

The Deputy Mayor for Planning and Economic Development (“Deputy Mayor”), pursuant to the authority set forth in § 107 of the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.07) (“Inclusionary Zoning Act”) and Mayor’s Order 2008-59, dated April 2, 2008, hereby gives notice of the adoption of a new Chapter 22 entitled “Inclusionary Zoning Implementation” of Title 14 (Housing) of the District of Columbia Municipal Regulations (“DCMR”).

These rules will establish procedures for implementing the Inclusionary Zoning Act and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 of Title 11 (Zoning) of the DCMR.

A revised notice of proposed rulemaking on this matter was published in the *D.C. Register* on December 26, 2008 (55 DCR 12923). In response to comments received after issuance of the notice, certain changes to the proposed rulemaking were incorporated into this final rulemaking. These changes include: a clarification of the structure and content of required lease terms, revisions to ensure consistency with existing landlord-tenant law, a clarification of the maximum resale price formula and the inclusion of condominium fees and assessments as part of the determination of rent paid, and a clarification of, modification of, and elaboration on the applicability of the rules. The changes either clarify concepts in the proposed rules or, if substantive, are within the scope of subject matter of the proposed rules.

These final rules shall become effective on the date of publication of this notice in the *D.C. Register*, but pursuant to and with the exception of § 2225, shall not become applicable until ninety (90) days after such publication or the date on which the final Maximum Rent and Price Schedule is published in the D.C. Register, whichever is later.

Title 14 (Housing) of the DCMR is amended by adding a new Chapter 22 to read as follows:

CHAPTER 22 INCLUSIONARY ZONING IMPLEMENTATION

- Secs.
- 2200 General Provisions
- 2201 Prerequisites for Obtaining Building Permits for an Inclusionary Development
- 2202 Application for Certificate of Inclusionary Zoning Compliance
- 2203 Review and Approval of Application for Certificate of Inclusionary Zoning Compliance
- 2204 Inclusionary Development Covenant
- 2205 Certificates of Occupancy for Inclusionary Units
- 2206 Notice of Availability; Housing Locator Website Registration
- 2207 Designation of Maximum Purchase Price or Rent

- 2208 Method of Selection of Households
- 2209 District Lottery – Registration for Lottery
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- 2211 District Lottery – Notification of Households and Owners
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- 2213 Verification of Household Eligibility; Required Certifications
- 2214 Certifying Entity
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- 2216 Responsibilities of Rental Inclusionary Development Owners and Tenants
- 2217 Responsibilities of Inclusionary Unit Owners
- 2218 Determination of Maximum Resale Price
- 2219 Rental of a For Sale Inclusionary Unit
- 2220 Conversion of a Rental Inclusionary Development to a For Sale Inclusionary Development
- 2221 Designated Housing Providers
- 2222 Sale by Heirs and Lenders
- 2223 Violations and Opportunity to Cure
- 2224 Waiver
- 2225 Applicability
- 2299 Definitions

2200 GENERAL PROVISIONS

- 2200.1 The purpose of this Chapter is to implement the Zoning Commission’s Inclusionary Zoning Regulations (Title 11 DCMR, Chapter 26) and the Inclusionary Zoning Act.
- 2200.2 Subject to certain exemptions, the Zoning Commission’s Inclusionary Zoning Regulations mandate that, in applicable zone districts, Inclusionary Units be provided in new residential buildings of ten (10) or more dwelling units or when the construction of ten (10) or more dwelling units represents an expansion of an existing building’s gross floor area by fifty percent (50%) or more.
- 2200.3 The Zoning Commission’s Inclusionary Zoning Regulations establish a formula to determine the minimum and maximum amount of gross floor area that must be reserved for Inclusionary Units, but leave the establishment of maximum prices and rents for the Inclusionary Units to the Council and the Mayor.
- 2200.4 Subject to certain exceptions, the Inclusionary Zoning Act requires Inclusionary Units be sold or leased only to persons authorized by the Mayor at a price or rent no greater than the maximum established by the Mayor.
- 2200.5 The Inclusionary Zoning Act also provides that:

- (a) No building permit shall be issued for an Inclusionary Development unless the Mayor approves a Certificate of Inclusionary Zoning Compliance and a covenant signed by the Owner of the Inclusionary Development;
- (b) No certificate of occupancy for a Market Rate Unit in an Inclusionary Development shall be issued unless the application includes a written statement signed by the Mayor and dated no earlier than six (6) months before the date of the application indicating that the Inclusionary Development is in compliance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance; and
- (c) A violation of the Inclusionary Zoning Program constitutes grounds for the revocation of any building permit and certificate of occupancy for the market rate portions of the Inclusionary Development.

2200.6 This Chapter implements these aspects of the Inclusionary Zoning Act by establishing, among other things:

- (a) The process and prerequisites for obtaining building permits and certificates of occupancy for Inclusionary Developments;
- (b) The process for selecting households for referral to the owner of an Inclusionary Unit; and
- (c) The responsibilities of and limitations on Inclusionary Unit Owners and Tenants.

2200.7 All timeframes established in this Chapter for an agency to take an action are guidelines only. An agency's failure to act within a timeframe established in this Chapter shall not constitute a default by the agency and shall not permit any person to take or refuse to take any action governed by the Inclusionary Zoning Program.

2200.8 In computing a period of time specified in this Chapter, calendar days shall be counted unless otherwise provided.

2200.9 In computing a period of time specified in this Chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period of time so computed shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which case the period of time shall run until the end of the next day that is neither a Saturday, Sunday, nor official District of Columbia holiday.

2200.10 When, under this Chapter, a person has the right or is required to perform an act within a prescribed period of time after the sending of or the date of a notice or other paper, and the paper or notice is sent by mail, three (3) days shall be added to the prescribed period of time.

2200.11 In the event of a conflict between the provisions of this Chapter and the provisions of the Inclusionary Zoning Act or the Zoning Commission's Inclusionary Zoning Regulations, the most stringent provision shall apply.

2201 PREREQUISITES FOR OBTAINING BUILDING PERMITS FOR AN INCLUSIONARY DEVELOPMENT

2201.1 No building permit shall be issued for an Inclusionary Development unless:

- (a) The Department of Consumer and Regulatory Affairs receives and approves an application for a Certificate of Inclusionary Zoning Compliance, signed by the Owner of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program; and
- (b) The Inclusionary Development Owner files with the District of Columbia Recorder of Deeds the Inclusionary Development Covenant approved by the Department of Housing And Community Development pursuant to § 2204.

2202 APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

2202.1 The Inclusionary Development Owner shall file a written application for a Certificate of Inclusionary Zoning Compliance with the Department of Consumer and Regulatory Affairs no later than the date upon which the first application for a building permit is filed for the Inclusionary Development.

2202.2 The Inclusionary Development Owner shall include with its application for a Certificate of Inclusionary Zoning Compliance payment of an application fee of two hundred fifty dollars (\$250).

2202.3 The Inclusionary Development Owner shall file its application for a Certificate of Inclusionary Zoning Compliance on a form prescribed by the Department of Consumer and Regulatory Affairs and shall provide such information as is requested on the form.

2202.4 The application form for a Certificate of Inclusionary Zoning Compliance shall include:

- (a) The name of the Inclusionary Development, its marketing name if different, and the apartment house or condominium name, if applicable;
- (b) The street address of the Inclusionary Development;
- (c) The zone district and, if applicable, overlay district in which the Inclusionary

Development is located;

- (d) The current and proposed square, suffix, and lot numbers on which the Inclusionary Development will be located;
- (e) A list of all Inclusionary Units in the Inclusionary Development. Each Inclusionary Unit shall be identified by unit number, net square footage, and the number of bedrooms. The list shall also include, and separately identify, any Inclusionary Units that will serve as the location for the offsite compliance of another Inclusionary Development, as approved by the Board of Zoning Adjustment, together with a copy of the Board of Zoning Adjustment order approving the offsite compliance;
- (f) A certification from the Inclusionary Development’s architect or engineer that the size of each Inclusionary Unit is at least ninety-eight percent (98%) of the average size of the same type of Market Rate Unit in the development or at least ninety-eight percent (98%) of the size indicated in the following table, whichever is lesser:

Types of Dwelling	Type of Unit	Minimum Unit Size (square feet)
Multiple Family Dwelling	Studio/ Efficiency	400
	One Bedroom	550
	Two Bedroom	800
	Three Bedroom	1000
	Four Bedroom	1050
One or Two Household Dwellings	Two Bedroom	1000
	Three Bedroom	1200
	Four Bedroom	1400

- (g) A copy of the site plan, front elevation or block face, and all residential floor plans for the Inclusionary Development. The floor plans shall show the location of each Inclusionary Unit and each Market Rate Unit and shall identify each by unit number;
- (h) A copy of the building plat, if required by the Department of Consumer and Regulatory Affairs pursuant to 12A DCMR § 106.1.12;
- (i) An unsigned copy of the Inclusionary Development Covenant described in § 2204;
- (j) A deed of trust, if required by the Department of Housing and Community Development pursuant to § 2204.2;
- (k) A plan for the phasing of construction that demonstrates compliance with 11 DCMR § 2605.5, which requires that all Inclusionary Units in an Inclusionary Development be constructed prior to or concurrently with the construction of

Market Rate Units, except that in a phased development, the Inclusionary Units shall be constructed at a pace that is proportional with the construction of the Market Rate Units;

- (l) The total land area of all of the lots included in the Inclusionary Development;
- (m) The total gross square footage of the Inclusionary Units in the Inclusionary Development, the net residential square footage of the Inclusionary Development, and the gross residential square footage of the Inclusionary Development;
- (n) The total net floor area that will be set aside for Inclusionary Units as calculated by multiplying the total gross square footage of the Inclusionary Units required by 11 DCMR § 2603 by the ratio of the net residential square footage to the gross residential square footage of the Inclusionary Development;
- (o) The total gross floor area of Inclusionary Units that will be set aside for Low-Income Households, if such Inclusionary Units are required by 11 DCMR § 2603.3, calculated pursuant to the method set forth in paragraph (n) of this subsection;
- (p) A proposed schedule of standard finishes, fixtures, equipment, and appliances for both Inclusionary Units and Market Rate Units;
- (q) For each Inclusionary Unit, the approximate date by which the Inclusionary Development Owner will provide a Notice of Availability pursuant to § 2206;
- (r) If construction of the Inclusionary Development will result in the temporary displacement of tenants who are entitled by law to return to comparable units, a list of the Inclusionary Units for which a right of return exists; and
- (s) Such other information as may be requested by the Department of Consumer and Regulatory Affairs.

2203 REVIEW AND APPROVAL OF APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

- 2203.1 If the Department of Consumer and Regulatory Affairs determines that an application for a Certificate of Inclusionary Zoning Compliance does not demonstrate compliance with the Inclusionary Zoning Program or the information provided is insufficient, the Department of Consumer and Regulatory Affairs shall provide to the Inclusionary Development Owner a written notice of the deficiency and shall allow the Inclusionary Development Owner a reasonable period of time, designated in the written notice, to cure the deficiency.

- 2203.2 If the Inclusionary Development Owner fails to cure the deficiency within the period of time set forth in the written notice, the Department of Consumer and Regulatory Affairs may deny the application.
- 2203.3 If the application for a Certificate of Inclusionary Zoning Compliance demonstrates compliance with the Inclusionary Zoning Program, and the proposed Inclusionary Development Covenant conforms to the requirements of § 2204, the Department of Consumer and Regulatory Affairs shall issue the Certificate of Inclusionary Zoning Compliance.

2204 INCLUSIONARY DEVELOPMENT COVENANT

- 2204.1 The proposed Inclusionary Development Covenant submitted in accordance with § 2202.4(i) shall bind all persons with a property interest in any or all of the Inclusionary Development, and all assignees, mortgagees, purchasers, and other successors in interest, to such declarations as the Department of Housing and Community Development may require, but, at a minimum, shall include:
- (a) A provision requiring that the present and all future Owners of a Rental Inclusionary Development shall construct or maintain and reserve Inclusionary Units at such affordability levels and in such number, square footage, and comparable level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall rent such Inclusionary Units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
 - (b) A provision requiring that the present and all future Owners of a For Sale Inclusionary Development shall construct and maintain Inclusionary Units at such affordability levels and in such number, and square footage as indicated on the Certificate of Inclusionary Zoning Compliance and shall sell each Inclusionary Unit in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
 - (c) A provision binding all assignees, mortgagees, purchasers, and other successors in interest to the Inclusionary Development Covenant; and
 - (d) A provision providing for the release or extinguishment of the Inclusionary Development Covenant if the District revokes or rescinds the building permit, the building permit expires, or the Inclusionary Development Owner relinquishes its right to construct under the building permit; and
 - (e) A provision requiring that the sale or resale of an Inclusionary Unit shall be only to:
 - (1) A Household selected by the Department of Housing and Community Development or otherwise authorized by this Chapter, at a price that

does not exceed the Maximum Resale Price established in accordance with § 2218; or

- (2) A housing provider designated by the Department of Housing and Community Development pursuant to § 2221 at a price equal to or greater than the Maximum Resale Price, as may be agreed to by the Inclusionary Unit Owner and the designated housing provider.

2204.2 The Department of Housing and Community Development may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner with the Inclusionary Development Covenant.

2205 CERTIFICATES OF OCCUPANCY FOR INCLUSIONARY UNITS

2205.1 An Inclusionary Development Owner shall obtain a certificate of occupancy for each Inclusionary Unit in an Inclusionary Development or a certificate of occupancy for an Inclusionary Development that identifies and includes each Inclusionary Unit in the Inclusionary Development.

2205.2 Prior to the issuance of a certificate of occupancy for an Inclusionary Unit or Inclusionary Development, an Inclusionary Development Owner shall provide to the Department of Consumer and Regulatory Affairs an update of all information provided in its application for a Certificate of Inclusionary Zoning Compliance, if there has been any substantive change to such information since the filing of the application. The Department of Consumer and Regulatory Affairs shall review the updated information pursuant to the procedures set forth in § 2203.

2205.3 After the submission of the application for a certificate of occupancy, the Department of Consumer and Regulatory Affairs shall inspect the Inclusionary Unit or Inclusionary Development for compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.

2205.4 The Department of Consumer and Regulatory Affairs shall make good faith efforts to complete its Inclusionary Zoning compliance inspection within ten (10) business days after receipt of the Inclusionary Development Owner's notification.

2205.5 No certificate of occupancy for an Inclusionary Unit or Inclusionary Development shall be issued unless the Department of Consumer and Regulatory Affairs determines that the Inclusionary Unit or Inclusionary Development is in compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.

2205.6 The Department of Consumer and Regulatory Affairs may authorize third parties to certify the compliance of an Inclusionary Unit or Inclusionary Development with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.

**2206 NOTICE OF AVAILABILITY; HOUSING LOCATOR WEBSITE
REGISTRATION**

- 2206.1 The provisions of this section govern the process by which:
- (a) The owner of a For Sale Inclusionary Development or For Sale Inclusionary Unit fulfills its obligation to notify the Department of Housing and Community Development that an Inclusionary Unit is available for purchase; and
 - (b) The owner of a Rental Inclusionary Development fulfills its obligation to notify the Department of Housing and Community Development that an Inclusionary Unit is available for lease.
- 2206.2 An Owner shall provide the notification described in § 2206.1 to the Department of Housing and Community Development by filing a written Notice of Availability in accordance with the provisions of this section.
- 2206.3 An Inclusionary Development Owner shall file the initial Notice of Availability for an Inclusionary Unit at least forty-five (45) days before the date the Inclusionary Development Owner expects to apply for a certificate of occupancy for the Inclusionary Unit.
- 2206.4 An Owner of a Rental Inclusionary Unit shall file all subsequent Notices of Availability no later than ten (10) days after a Tenant gives notice of its intent to vacate the Inclusionary Unit, including a notice of intent provided pursuant to § 2216.1, or the Owner becomes aware that the Tenant has vacated or will vacate the Inclusionary Unit, whichever is earliest.
- 2206.5 An Owner of a For Sale Inclusionary Unit shall file all subsequent Notices of Availability at least forty-five (45) days before the date the Owner intends to market the Inclusionary Unit to eligible Households or, if the Inclusionary Unit is to be offered pursuant to a lottery performed pursuant to § 2210, at least thirty-five (35) days before the Owner wishes to have the lottery conducted.
- 2206.6 The Notice of Availability shall include:
- (a) The Inclusionary Unit's street address and unit number;
 - (b) The estimated date upon which the Inclusionary Unit will be available for occupancy;
 - (c) If the Inclusionary Unit is a Rental Inclusionary Unit, a copy of the proposed lease to be furnished to an eligible Household, which shall be for at least a one (1)-year term and which shall both include the following terms and shall state that the following terms are material terms of the lease:

- (1) The Tenant shall provide a Certification of Income, Affordability, and Housing Size in accordance with § 2216.1;
 - (2) The Tenant shall provide a Declaration of Eligibility in accordance with § 2216.1;
 - (3) The Tenant shall maintain its eligibility for the Inclusionary Unit based on the Tenant's Household Size and Annual Income requirements;
 - (4) The Tenant shall provide the information and documents required by § 2216.1 within the time period specified by § 2216.1
 - (4) The Inclusionary Unit shall be the principal residence of all adult persons who occupy the Inclusionary Unit; and
 - (5) The Tenant shall not make intentional misrepresentations to the Department of Housing and Community Development or the Certifying Entity;
- (d) For each initial Notice of Availability for a For Sale or Rental Inclusionary Unit, a list of any optional or required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking. For each such fee or cost, the following information shall be provided:
- (1) The amount of the fee or cost;
 - (2) A description of the fee or cost and how it will be charged; and
 - (3) If applicable, the budget for the condominium, cooperative, or homeowner association, the condominium, cooperative, or homeowner association fee for each Market Rate Unit and each Inclusionary Unit, and the formula by which such fee is assessed;
- (e) For each subsequent Notice of Availability for a For Sale or Rental Inclusionary Unit, a list of any required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking, and the amount of each such fee or cost;
- (f) For each subsequent Notice of Availability for a For Sale Inclusionary Unit, an itemized list of all capital improvements and upgrades made to the Inclusionary Unit that the Owner wishes the Department of Housing and Community Development to consider when establishing the Maximum Resale

Price pursuant to § 2218. The Inclusionary Unit Owner shall document each cost or value claimed with receipts, contracts, or other supporting evidence;

- (g) For each subsequent Notice of Availability for a Rental Inclusionary Unit, the method by which a Household shall be selected for the rental or sale of the Inclusionary Unit, which method shall be consistent with § 2208;
- (h) Such other information as may be required by the Department of Housing and Community Development.

2206.7 Within twenty-four (24) hours after the Owner files a Notice of Availability, the Owner shall register the Inclusionary Unit for which the Notice of Availability was filed with the housing locator website established by the District pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; 55 DCR 5313).

2207 **DESIGNATION OF MAXIMUM PURCHASE PRICE OR RENT**

2207.1 Within ten (10) business days after the receipt of a Notice of Availability, the Department of Housing and Community Development shall notify the Owner of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability.

2207.2 Except as provided in § 2207.5, the initial maximum purchase price or rent for an Inclusionary Unit shall be the greater of:

- (a) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the application for the Certificate of Inclusionary Zoning Compliance issued for the Inclusionary Development in which the Inclusionary Unit is located; or
- (b) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the Notice of Availability for the Inclusionary Unit.

2207.3 The maximum purchase price for all subsequent sales of an Inclusionary Unit Owner shall be the Maximum Resale Price determined by the Department of Housing and Community Development pursuant to § 2218.

2207.4 The maximum rent for all subsequent rentals shall be the rent set forth in the Rent and Price Schedule in place on the date that the Notice of Availability for the Inclusionary Unit is filed.

2207.5 If the costs provided for a For Sale Inclusionary Unit in response to §2206.6(d) exceed by ten percent (10%) or more the cost assumptions in the applicable Rent and Price Schedule, the Department of Housing and Community Development may lower the initial maximum purchase price to the extent needed to maintain the affordability

standard set forth in § 103(a) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(a)) and this Chapter.

2208 METHOD OF SELECTION OF HOUSEHOLDS

- 2208.1 Except as provided in § 2208.3, a Household shall be selected for the initial or subsequent sale and for the initial lease of an Inclusionary Unit through a lottery conducted pursuant to § 2210.
- 2208.2 No lottery is required for the initial or subsequent sale or the initial lease of an Inclusionary Unit if the Inclusionary Development is to be:
- (a) Leased or sold to a household displaced from and entitled by law to return to the Inclusionary Unit;
 - (b) Leased or sold as a replacement unit as part of the New Communities Initiative; or
 - (c) Sold to a Designated Housing Provider if the Designated Housing Provider is referred to the Owner pursuant to § 2221;
 - (d) Sold by an Inclusionary Unit Owner to the Inclusionary Unit Owner's spouse, domestic partner, parent, or child who is eighteen (18) years of age or older, if the spouse, domestic partner, parent, or child submits the information and documents required by § 2213.1; or
- 2208.3 A Household may be selected for the subsequent lease of a Rental Inclusionary Unit through:
- (a) A lottery conducted pursuant to § 2210;
 - (b) A method described in § 2208.2(b) or (c) (and set forth in the Notice of Availability pursuant to § 2206.6(g)); or
 - (c) A method established by the Owner (and set forth in the Notice of Availability pursuant to § 2206.6(g)), if the method meets the following standards:
 - (1) The Owner maintains a selection list or waiting list ("Owner List") for the Inclusionary Unit or the Inclusionary Development in which the Inclusionary Unit is located that is open to the general public and includes the information listed in § 2209.3;
 - (2) The Owner markets the Inclusionary Unit to the first four (4) Households on the Owner List that qualify for the Inclusionary Unit based on Household size and Household income, as ranked in the following order:

- (A) Households residing in the District of Columbia, who shall then be ranked by the length of time each has been on the Owner List;
 - (B) Households with a least one (1) member employed in the District of Columbia, who shall then be ranked by the length of time each has been on the Owner List; and
 - (C) Other Households, who shall then be ranked by the length of time each has been on the Owner List.
- (3) The Owner allows each Household at least ten (10) days to indicate its interest in leasing the Inclusionary Unit.
 - (4) The Owner does not lease the Inclusionary Unit before thirty (30) days after the Owner begins to market the Inclusionary Unit to the four (4) Households, unless the Inclusionary Unit is leased to the highest-ranked Household that has indicated its interest in leasing the Inclusionary Unit.
 - (5) After the thirty (30) day period designated in subparagraph (4) of this subsection, the Owner may lease the Inclusionary Unit to any of the four (4) Households; provided, if there are two (2) or more such Households that are ready and eligible to lease the Inclusionary Unit, and meet the Owner's non-income based rental or sale criteria, the Owner shall lease the Inclusionary Unit to the highest-ranked such Household.
 - (6) If none of the first four (4) Households leases the unit after a reasonable period of time, the Owner may market the Inclusionary Unit to the next four (4) Households ranked in the same order as set forth in paragraph (b) of this subsection and lease the Inclusionary Unit pursuant to the standards established by subparagraphs (1) through (5) of this subsection.

2209 DISTRICT LOTTERY — REGISTRATION FOR LOTTERY

- 2209.1 In order to be eligible to participate in the District-conducted lottery for the purchase or rent of an Inclusionary Unit, a Household shall register with the Department of Housing and Community Development.
- 2209.2 The Department of Housing and Community Development shall maintain at least the two (2) following lottery registration lists:
 - (a) The District List, consisting of Households whose members live in, or at least

one (1) of whose members works in, the District of Columbia; and

- (b) The Miscellaneous List, consisting of Households that do not qualify to be placed on the District List.

2209.3 A Household seeking to be placed on a registration list shall provide the following information to the Department of Housing and Community Development on such form as may be prescribed by the Department of Housing and Community Development:

- (a) The name, address, and telephone number of the Household member who will serve as the principal contact for the Department of Housing and Community Development;
- (b) The Household's size and estimated annual income;
- (c) If the Household consists entirely of a person enrolled as a full-time student in a college or university, the annual income of the person's parent or guardian; and
- (d) For each Household member:
 - (1) The current principal residence of the Household member;
 - (2) If employed, the name and address of the employer; and
 - (3) If a college or university student, the name and address of the college or university.

2209.4 Registration shall become effective on the date the application for registration is, after review by the Department of Housing and Community Development, considered complete and shall expire two (2) years thereafter, unless renewed prior to expiration.

2209.5 The Department of Housing and Community Development shall notify each registrant of the date upon which their registration became effective and the date upon which the registration will expire.

2209.6 An application to renew a registration shall indicate any change in any information that was required to be provided in the initial application.

2210 DISTRICT LOTTERY – CONDUCT OF LOTTERIES

2210.1 No later than ten (10) business days after receiving a Notice of Availability for an Inclusionary Unit to be offered pursuant to a District lottery, the Department of Housing and Community Development shall hold a lottery of those Households on

the District List that meet the size and Annual Income requirements for the Inclusionary Unit as described in section § 2211.3.

2210.2 Unit size eligibility shall be determined based upon the following standards:

Unit Size (Bedroom)	Minimum Number of Persons in Unit	Maximum Number of Persons in Unit
0	1	1
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10
6	10	12

2210.3 For each Inclusionary Unit, the Department of Housing and Community Development shall randomly select at least four (4) Households through a lottery from the District List. If fewer than four (4) Households on the District List meet the Household size and Annual Income standards applicable to the Inclusionary Unit, the Department of Housing and Community Development shall hold a lottery from the Miscellaneous List in order to select at least four (4) Households which meet the Household size and Annual Income standards applicable for the Inclusionary Unit.

2210.4 The Households chosen shall then be ranked in the following order:

- (a) Households residing in the District of Columbia, who shall then be ranked by the length of time each has been on the District List;
- (b) Households with a least one (1) member employed in the District of Columbia, who shall then be ranked by the length of time each has been on the District List; and
- (c) Households on the Miscellaneous List, who shall then be ranked by the length of time each has been on the Miscellaneous List.

2210.5 If more than one (1) Household has been on the registration list for the same period of time, their ranking shall be in the order in which the Households were selected in the lottery.

2210.6 If none of the Households selected through a lottery purchase or rent the Inclusionary Unit, the Department of Housing and Community Development shall continue to hold lotteries pursuant to the procedures set forth in this section until a Household purchases or leases the Inclusionary Unit or the Inclusionary Unit is leased or sold; except, the Department of Housing and Community Development may permit the

rental or sale of the Inclusionary Unit to a Household that is not registered for the lottery if:

- (a) More than six (6) months has passed since the Notice of Availability was submitted for the Inclusionary Unit;
 - (b) No eligible Household or Designated Housing Provider has executed a pre-sale or purchase contract or lease within that period; and
 - (c) The Owner submits a written statement that demonstrates good faith efforts on the part of the Owner to sell or lease the unit to Households or Designated Housing Providers referred by the Department of Housing and Community Development.
- 2210.7 With respect to each Household selected pursuant to a lottery under this section, the Department of Housing and Community Development shall provide a notice under § 2211.

2211 DISTRICT LOTTERY – NOTIFICATION OF HOUSEHOLDS AND OWNERS

- 2211.1 No later than ten (10) business days after a lottery is held, the Department of Housing and Community Development shall provide to the Owner a written list of the Households selected pursuant to the lottery, along with the lottery rank of each Household.
- 2211.2 Not later than ten (10) business days after a lottery is held, the Department of Housing and Community Development shall provide a notice to each of the Households selected in the lottery of their selection and shall provide to each Household their rank, the address, unit type, and maximum rent or purchase price of the Inclusionary Unit for which the lottery was held and the means by which the Household may provide to the Owner the confirmation and information required by § 2211.3.
- 2211.3 The notice provided pursuant to § 2211.2 shall inform each Household that the Household is required to confirm its interest in the Unit to the Owner within ten (10) business days after the date of the notice and to provide the following to the Owner within forty-five (45) calendar days after the date of the notice:
- (a) A Declaration of Eligibility, as described in § 2213;
 - (b) A Certification of Income, Affordability, and Housing Size, as described in § 2213;

- (c) If purchasing a For Sale Inclusionary Unit, a pre-qualification letter from a lender indicating the Household's credit worthiness and ability to afford the purchase price; and
- (d) Any other documents requested by the Department of Housing and Community Development.

2211.4 The notice shall also state that the Household must execute a pre-sale contract or lease for the Inclusionary Unit no later than sixty (60) days after the date of the notice.

2211.5 A Household that fails to meet a deadline set forth in § 2211.3 or § 2211.4 shall be ineligible to purchase or rent the Inclusionary Unit, unless the Owner extends the deadline.

2212 DISTRICT LOTTERY — MARKETING OF INCLUSIONARY UNITS TO HOUSEHOLDS SELECTED PURSUANT TO THE LOTTERY

2212.1 The Owner shall market an Inclusionary Unit to each of the Households referred to the Owner under § 2211.1 that has confirmed its interest in the Inclusionary Unit pursuant to § 2211.3.

2212.2 The Owner shall not sell or lease the Inclusionary Unit to an Interested Household before forty-five (45) days after the Department of Housing and Community Development provides notice to Households under § 2211.2, unless the Inclusionary Unit is leased or sold to the highest-ranked Interested Household.

2212.3 After the forty-five (45) day period designated in § 2212.2, the Owner may lease or sell the Inclusionary Unit to any of the Interested Households referred to the Owner; provided, if there are two (2) or more such Households that are ready and eligible to lease or purchase the Inclusionary Unit, and meet the Owner's non-income based rental or sale criteria, the Owner shall lease or sell the Inclusionary Unit to the highest-ranked such Household.

2213 VERIFICATION OF HOUSEHOLD ELIGIBILITY; REQUIRED CERTIFICATIONS

2213.1 In order to be eligible to rent or purchase an Inclusionary Unit, a Household shall provide to the Owner of the Inclusionary Unit a Declaration of Eligibility and a Certification of Income, Affordability, and Housing Size.

2213.2 Except as set forth in § 2208.1(a), an Owner shall sell or rent an Inclusionary Unit only to a Household which:

- (a) Has provided a Certification of Income, Affordability, and Housing Size, obtained from a Certifying Entity, that complies with the requirements of this section; and
- (b) Has executed and provided a Declaration of Eligibility that complies with the requirements of this section.

2213.3 A Declaration of Eligibility required by this section shall be made on a form promulgated by the Department of Housing and Community Development and shall include a notarized statement of the Household and sworn under penalty of perjury that:

- (a) The Certification of Income, Affordability, and Household Size provided to the Owner was obtained from a Certifying Entity approved by the Department of Housing and Community Development;
- (b) The Household provided accurate and complete information to the Certifying Entity;
- (c) Each member of the Household will occupy the Inclusionary Unit as its principal residence;
- (d) The Household does not have an ownership interest in any other housing or will divest such interest before closing on the purchase of, or signing the lease for, the Inclusionary Unit;
- (e) The Household has satisfactorily completed a housing counseling class for homebuyers or renters approved by the Department of Housing and Community Development and evidence of such satisfactory completion is attached to the Declaration of Eligibility;
- (f) The Household has been informed of, and understands, its rights and obligations under the Inclusionary Covenant or lease riders required pursuant to § 2216.1; and
- (g) Any other representations required by the Department of Housing and Community Development as part of the form.

2213.4 The Inclusionary Unit Owner shall provide the Inclusionary Covenant or lease riders to the Household within three (3) business days after a request from the Household.

2213.5 A Certification of Income, Affordability, and Housing Size required by this section means a document signed by an authorized representative of a Certifying Entity approved by the Department of Housing and Community Development, certifying:

- (a) The Household's Annual Income;

- (b) That the Household's Annual Income qualifies it as being either a Low-Income Household or Moderate-Income Household;
- (c) That the Household's Annual Income does not exceed the limit imposed by the Inclusionary Development Covenant applicable to the Inclusionary Unit;
- (d) The Household's size;
- (e) That the Household's size is within the size range applicable to the Inclusionary Unit under § 2206.3;
- (f) For a For Sale Inclusionary Unit, that the Household will not expend more than forty-one percent (41%) of the its Annual Income on mortgage payments, insurance, taxes, and condominium and homeowner association fees for the applicable Inclusionary Unit; and
- (g) For a Rental Inclusionary Unit, that the Household will not expend more than thirty-eight percent (38%) of its Annual Income on rent and utilities if not included in the rent for the applicable Inclusionary Unit.

2214 CERTIFYING ENTITY

- 2214.1 A Household shall obtain, and an Owner shall accept, a Certification of Income, Affordability, and Housing Size only from a Certifying Entity approved by the Department of Housing and Community Development.
- 2214.2 The Department of Housing and Community Development may approve a Certifying Entity pursuant to a request for proposals process or through an application process.
- 2214.3 The Department of Housing and Community Development shall approve a Certifying Entity based on the entity's experience in successfully implementing activities similar to those described in § 2214.4, the capacity and experience of the entity's staff and management, the capacity and support of the entity's board of directors, the strength of the entity's financial and management systems, and any other factors the Department of Housing and Community Development deems relevant.
- 2214.4 A Certifying Entity shall be responsible for certification of a Household's Annual Income, certification of a Household's household size, certification that the rent or purchase price of an Inclusionary Unit is affordable to the Household, counseling and training Households for homeownership, reporting data to the Department of Housing and Community Development, compliance with relevant regulations, and any other activities required by the Department of Housing and Community Development.

2215 CLOSING PROCEDURES

- 2215.1 Prior to closing, the Owner shall attach as exhibits to the deed used to convey an Inclusionary Unit both the Declaration of Eligibility and the Certification of Income, Affordability, and Housing Size provided to the Owner by Household purchasing the Inclusionary Unit, or such portions of the documents designated by the Department of Housing and Community Development.
- 2215.2 The Owner shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN INCLUSIONARY DEVELOPMENT COVENANT, DATED AS OF _____, 20__, RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER _____, ON _____ 20__, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

- 2215.3 Within ten (10) days after closing, the new Inclusionary Unit Owner shall provide the Department of Housing and Community Development with a signed copy of the United States Department of Housing and Urban Development Settlement Statement and a copy of the new deed (including the Declaration of Eligibility and the Certification of Income, Affordability, and Housing Size).

2216 RESPONSIBILITIES OF RENTAL INCLUSIONARY DEVELOPMENT OWNERS AND TENANTS

- 2216.1 No later than sixty (60) days before each anniversary of the first day of the lease, a Household leasing a Rental Inclusionary Unit shall submit to the Inclusionary Development Owner the following information and documents on or with such form as may be prescribed by the Department of Housing and Community Development:
- (a) A statement as to whether the Tenant intends to renew the lease; and
 - (b) If the Tenant states that he or she intends to renew the lease:
 - (1) A certification that the Household continues to occupy the unit as its principal residence;
 - (2) The names of each person residing in the unit;
 - (c) A Certification of Income, Affordability, and Household Size that meets the requirements of § 2213; and

- (d) A Declaration of Eligibility that meets the requirements of § 2213.
- 2216.2 The Owner may, in the Owner's discretion, extend the deadline established by § 2216.1; provided, the deadline shall not be extended beyond the last day of the Tenant's lease.
- 2216.3 If a Tenant is in violation of a lease term required by § 2206.6, the Inclusionary Development Owner may provide to the Tenant a notice to vacate under District law.
- 2216.4 If a notice to vacate is provided pursuant to § 2216.3, , the Inclusionary Development Owner shall permit the Household to continue to occupy the unit at the current rent for not less than three (3) and no more than six (6) months after the Inclusionary Unit Owner provides to the Tenant the notice to vacate. Acceptance of rent during this period will not constitute a waiver of the violation of the lease or another obligation of tenancy or void the notice to vacate.
- 2216.5 An Inclusionary Unit Tenant shall not close on the purchase of residential property before the Tenant has provided notice of the intent to terminate its lease of the Inclusionary Unit in accordance with the terms of the lease.
- 2216.6 The Inclusionary Development Owner shall not require payment of rent that is greater than the maximum allowable rent determined in accordance with §§ 2207.2 and 2207.4.
- 2216.7 Annually within fifteen (15) days after the anniversary of the issuance date of the first certificate of occupancy for an Inclusionary Unit in a Rental Inclusionary Development, the Owner shall submit a report to the Department of Housing and Community Development setting forth the following information for the entire Rental Inclusionary Development:
- (a) The number of Rental Inclusionary Units, by bedroom count, that are occupied;
 - (b) The number of Rental Inclusionary Units, by bedroom count, that were vacated during the previous twelve (12) months;
 - (c) For each Rental Inclusionary Unit vacated during the previous twelve (12) months, the unit number of the unit that was vacated, the number of days the unit was vacant (or a statement that the unit is still vacant), and the date on which a Notice of Availability was provided to the Department of Housing and Community Development pursuant to § 2206;
 - (d) For each occupied Rental Inclusionary Unit, the names of all occupants, the Household size, and the Household's Annual Income as of the date of the most recent Certification of Income, Affordability, and Housing Size;

- (e) A sworn statement that to the best of the Owner's information and knowledge, the Annual Income and size of each Household occupying each Rental Inclusionary Unit complies with the size and income limits applicable to the Rental Inclusionary Unit; and
- (f) A copy of each new and revised Certification of Income, Affordability, and Housing Size provided in accordance with § 2216.1.

2217 RESPONSIBILITIES OF INCLUSIONARY UNIT OWNERS

2217.1 Annually on the anniversary of the closing date for an Inclusionary Unit, the Owner of a For Sale Inclusionary Unit shall submit to the Department of Housing and Community Development certification that it continues to occupy the unit as its principal residence. The certification shall be submitted on or with such form as may be prescribed by the Department of Housing and Community Development.

2218 DETERMINATION OF MAXIMUM RESALE PRICE

2218.1 The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Inclusionary Unit shall be determined through use of the formula $MRP = (P \times (F) + V$ ("Formula"), where:

- (a) P = the price the Owner paid for the Inclusionary Unit;
- (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Department of Housing and Community Development pursuant to this section; and
- (c) F = the sum of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the year of the Owner's purchase of the Inclusionary Unit to the year of the sale of the Inclusionary Unit by the Owner. This sum may be expressed:
 - (1) As the result of the formula $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) ^ (1/10) - 1) + \dots + ((AMI \text{ Year } k / AMI \text{ year } k-10) ^ (1/10) - 1) / n]) ^ n$, where m = the year in which the Inclusionary Unit was purchased by the Owner, k = the year in which the Inclusionary Unit is sold by the Owner, and n = the number of years the Inclusionary Unit is owned by the Owner; or
 - (2) As published by the Department of Housing and Community Development.

2218.2 For the purposes of determining the value of "V" in the Formula, the following improvements made to an Inclusionary Unit after the date of purchase may be

included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (a) Eligible capital improvements, which will be valued at 100% of reasonable cost, as determined by the Department of Housing and Community Development; and
- (b) Eligible replacement and repair costs, which shall be valued at 50% of reasonable cost, as determined by the Department of Housing and Community Development.

- 2218.3 Ineligible costs shall not be included in the determining the value of “V” in the Formula.
- 2218.4 The value of improvements may be determined by the Department of Housing and Community Development based upon documentation provided by the Inclusionary Unit Owner or upon a standard value established by the Department of Housing and Community Development.
- 2218.5 The Department of Housing and Community Development may disallow an improvement if the Department of Housing and Community Development finds that the improvement diminished or did not increase the fair market value of the Inclusionary Unit.
- 2218.6 The Department of Housing and Community Development may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.
- 2218.7 The Owner shall permit a representative of the Department of Housing and Community Development to inspect the Inclusionary Unit upon request to verify the existence and value of any capital improvements that are claimed by the Owner.
- 2218.8 No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the Inclusionary Unit.
- 2218.9 The value of personal property transferred to a purchaser in connection with the resale of a For Sale Inclusionary Unit shall not be considered part of the sales price of the For Sale Inclusionary Unit for the purposes of determining whether the sales price of the For Sale Inclusionary Unit exceeds the MRP.

2219 RENTAL OF A FOR SALE INCLUSIONARY UNIT

- 2219.1 An Inclusionary Unit Owner may temporarily lease a For Sale Inclusionary Unit to a Household referred to it by the Department of Housing and Community Development in accordance with the provisions of this section if such lease is not prohibited by applicable condominium or homeowner association rules.

- 2219.2 Except as set forth in § 2219.6, the lease term may not exceed twelve (12) months and may not be renewed.
- 2219.3 Except as set forth in § 2219.6, no more than one (1) temporary rental may occur with a five (5) year period.
- 2219.4 The Owner and Department of Housing and Community Development shall follow the notice of availability, website registration, and Household selection, notification, referral, and verification processes set forth in § 2206 and §§ 2209 through 2213.
- 2219.5 The maximum rent shall be the rent set forth in the Rent and Price Schedule in place on the date that the Notice of Availability for the Inclusionary Unit is filed.
- 2219.6 Upon written submission of a request substantiating substantial hardship, the Department of Housing and Community Development may grant an extension of the twelve (12)-month period established by § 2219.2 or the one (1)-time limitation established by § 2219.3. The Department of Housing and Community Development shall approve or disapprove the request, in its sole discretion based on the evidence before it, within a reasonable time period. Substantial hardship may include military service, Peace Corps service, or another reason causing the Owner to be required to leave the District metropolitan area temporarily.
- 2219.7 A condominium fee or assessment that a lessee of an Inclusionary Unit Owner leased under this section is required to pay shall be considered part of the rent of the lessee when determining whether the rent charged is consistent with the Maximum Rent and Purchase Price Schedule.

2220 CONVERSION OF A RENTAL INCLUSIONARY DEVELOPMENT TO A FOR SALE INCLUSIONARY DEVELOPMENT

- 2220.1 No condominium or cooperative documents may be filed to convert a Rental Inclusionary Development to a condominium or cooperative until a new application for a Certificate of Inclusionary Zoning Compliance is filed by the Inclusionary Development Owner and approved by the Department of Consumer and Regulatory Affairs and a Certificate of Inclusionary Zoning Compliance is issued by the Department of Consumer and Regulatory Affairs pursuant to the provisions set forth in § 2203.
- 2220.2 Prior to the issuance of a Certificate of Inclusionary Zoning Compliance under this section, the Inclusionary Development Owner shall record a new or amendatory Inclusionary Development Covenant, applicable to a For Sale Inclusionary Development, that complies with § 2204.
- 2220.3 The application for a Certificate of Inclusionary Zoning Compliance filed under this section shall demonstrate that the location and size of the Inclusionary Units will not

change from those approved under the Certificate of Inclusionary Zoning Compliance issued for the Rental Inclusionary Development.

- 2220.4 Tenants occupying Rental Inclusionary Units shall have the same rights as are provided in the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3401.01 *et seq.*) (“Conversion Act”).
- 2220.5 The offered sales price for a Rental Inclusionary Unit converted to a For Sale Inclusionary Unit shall not exceed the applicable maximum purchase price stated on the Price and Rent Schedule that is in effect on the date that the Tenant receives the first notice of conversion pursuant to the Conversion Act.
- 2220.6 If the tenant does not purchase the Inclusionary Unit within the time provided in the Conversion Act, and the tenant is not entitled to remain in the unit pursuant to section 208 of the Conversion Act (D.C. Official Code § 42-3402.08), the Inclusionary Development Owner shall furnish the Department of Housing and Community Development with a Notice of Availability pursuant to § 2206 and register the Unit with the website established by the District pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; 55 DCR 5313).

2221 DESIGNATED HOUSING PROVIDERS

- 2221.1 The Department of Housing and Community Development may authorize housing providers, such as the District of Columbia Housing Authority, land trusts, or District-qualified nonprofit organizations (“Designated Housing Providers”), to purchase Inclusionary Units for the purpose of reselling the units to Households selected by the Department of Housing and Community Development in accordance with §§ 2209 through 2213, subject to the limitation set forth in 11 DCMR § 2603.5.
- 2221.2 To be eligible to be a Designated Housing Provider, the housing provider shall demonstrate to the satisfaction of the Department of Housing and Community Development its ability to acquire, maintain on a temporary basis, and sell the Inclusionary Unit to Households. The Department of Housing and Community Development may consider the relative needs and requirements of the housing providers and their clientele, readiness and ability of the housing provider to acquire, maintain on a temporary basis, and sell an Inclusionary Unit, and the number of units previously obtained by the housing provider in determining whether to authorize a housing provider to act as a Designated Housing Provider.
- 2221.3 The Department of Housing and Community Development may provide notice to Designated Housing Providers of the availability of an Inclusionary Unit prior to a lottery or at the request of an Owner. The Department of Housing and Community Development may provide the Designated Housing Providers up to ninety (90) days

after the date of the notice to enter into a contract with the Owner to purchase the Inclusionary Unit.

- 2221.4 Upon purchase of the Inclusionary Unit, the Designated Housing Provider shall be the Owner of the Inclusionary Unit and shall be subject to the provisions of this Chapter that apply to Owners.

2222 SALE BY HEIRS AND LENDERS

- 2222.1 If an Inclusionary Unit Owner dies, at least one (1) heir, legatee, or other person taking title to the Inclusionary Unit by will or by operation of law shall occupy the Inclusionary Unit or shall provide the Department of Housing and Community Development with a Notice of Availability in accordance with § 2206.
- 2222.2 In the event of foreclosure, the Inclusionary Development Covenant and Inclusionary Unit Covenant shall not be released and the mortgage holder shall provide the Department of Housing and Community Development with a Notice of Availability in accordance with § 2206.

2223 VIOLATIONS AND OPPORTUNITY TO CURE

- 2223.1 Prior to exercising the authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act, the Department of Housing and Community Development shall provide to the person who is alleged to have violated the Inclusionary Zoning Act or this Chapter a written notice setting forth with particularity the alleged violation and shall provide to that person at least thirty (30) days to cure the alleged violation. If the person cures the violation within the thirty (30) day period, the Department of Housing and Community Development shall not exercise its authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act. The Department of Housing and Community Development may extend the thirty (30) day period for good cause shown.
- 2223.2 The Department of Housing and Community Development shall not revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act except for a willful, substantial violation of the Inclusionary Zoning Act or this Chapter.

2224 WAIVER

- 2224.1 The Department of Housing and Community Development may, upon the request of an agency of the District or the written request of an Inclusionary Development Owner, waive the application of any of the provisions of this Chapter if:
- (a) The Inclusionary Development is participating in a District or federal program to provide affordable housing to low or moderate-income households,

including the New Communities Program, Community Development Block Grant Program, Low-Income Housing Tax Credit Program, and Housing Production Trust Fund Program;

- (b) The waived provision is not required by the Zoning Commission's Inclusionary Zoning Regulations or the Inclusionary Zoning Act; and
- (c) Application of the provision is burdensome when combined with other District or federal regulations or standards, the goal of the provision is adequately addressed by other District or federal regulations or standards, or waiver of the provision is in the best interests of the District.

2225 APPLICABILITY

2225.1 Other than this section, these rules shall become applicable on the later of the following two dates:

- (a) The date that is ninety (90) days after the date of publication in the *D.C. Register* of the Notice of Final Rulemaking; or
- (b) The date of the publication of the final Rent and Price Schedule in the *D.C. Register*.

2225.2 In accordance with the Zoning Commission's Inclusionary Zoning Regulations (Title 11 DCMR, Chapter 26), these rules and the provisions of the Inclusionary Zoning Act 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, or single room occupancy developments;
- (e) Properties located in any of the following areas:
 - (i) The Downtown Development or Southeast Federal Center Overlay Districts;
 - (ii) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones, as such areas were defined on February 12, 2007;

- (iii) The W-2 zoned portions of the Georgetown Historic District;
 - (iv) The R-3 zoned portions of the Anacostia Historic District;
 - (v) The C-2-A zoned portion of the Naval Observatory Precinct District;
and
 - (vi) The Eighth Street Overlay;
- (f) A building for which the application for a building permit was authorized by an order of the Board of Zoning Adjustment promulgated prior to the date that the first Maximum Rent and Price Schedule is published in the *D.C. Register*, subject to the requirements of 11 DCMR § 3202.6.
- (g) A building approved by the Zoning Commission pursuant to Chapter 24 of Title 24 DCMR, if the approved application was set down for hearing by the Zoning Commission for the District of Columbia prior to March 14, 2008.
- (h) Any other building for which a building permit was issued prior to the date that the first Maximum Rent and Price Schedule is published in the *D.C. Register* subject to the further requirements of 11 DCMR § 3202.4.

2299 DEFINITIONS

2299.1 When used in this Chapter, the following words and phrases shall have the meanings ascribed below:

Annual Income – annual income as defined in 24 C.F.R. § 5.609 as of [the date of publication of this Chapter in the *D.C. Register*].

Area Median Income – the area median income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for household size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers. Adjustments of Area Median Income for household size shall be made in the same manner as is prescribed in section 2(1) of the Housing Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801(1)).

Bedroom – a room with immediate access to an exterior window and a closet that is designated as a “bedroom” or “sleeping room” on construction plans submitted in an application for a building permit for an Inclusionary Development.

Certifying Entity – means an entity certified by the Department of Housing and Community

Development pursuant to § 2214.

Designated Housing Provider – an entity authorized by the Department of Housing and Community Development pursuant to § 2221 to purchase Inclusionary Units from Owners of Inclusionary Developments or Units for sale to Households selected by the Department of Housing and Community Development.

Eligible Capital Improvement – major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Inclusionary Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods.

Eligible Replacement and Repair Cost – in-kind replacement of existing amenities and repairs and general maintenance that keep an Inclusionary Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system.

For Sale Inclusionary Development – the portion of an Inclusionary Development that includes or will include Inclusionary Units that will be sold to Households.

For Sale Inclusionary Unit – an Inclusionary Unit that will be or has been sold to a Household.

Household – all persons who will occupy the Inclusionary Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

Inclusionary Development – a development subject to the provisions of the Inclusionary Zoning Program.

Inclusionary Development Covenant – the Inclusionary Development Covenant described in § 2204.

Inclusionary Development Owner – a person, firm, partnership, association, joint venture, or corporation, or government with a property interest in land or improvements that is or will be occupied by an Inclusionary Development, but excluding Inclusionary Unit Owners.

Inclusionary Unit – a dwelling unit set aside for sale or rental to Low-Income or Moderate-Income Households as required by the Inclusionary Zoning Program.

Inclusionary Unit Owner – a Household or Designated Housing Provider that owns an Inclusionary Unit.

Inclusionary Zoning Act – the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*).

Inclusionary Zoning Program – all of the provisions of the Zoning Commission’s Inclusionary Zoning Regulations, the Inclusionary Zoning Act, and this Chapter.

Ineligible Costs – means normal maintenance, general repair work, personal or decorative items or work, cosmetic enhancements, installations with limited useful life spans, and non-permanent fixtures not eligible for capital improvement credit as determined by the Department of Housing and Community Development. Such costs generally include: (i) cosmetic enhancements such as fireplace tiles and mantels, decorative wall coverings or hangings, window treatments (for example, blinds, shutters, and curtains), installed mirrors, shelving, and refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, and portable appliances; and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, and light bulbs.

Low-Income Household – a Household with a total Annual Income equal to or less than fifty percent (50%) of the Area Median Income, adjusted for household size.

Market Rate Unit – a unit in an Inclusionary Development that is not an Inclusionary Unit.

Moderate-Income Household – a Household with a total Annual Income greater than fifty percent (50%) and less than or equal to eighty percent (80%) of the Area Median Income adjusted for household size.

Notice of Availability – the notice required to be provided to the Department of Housing and Community Development by an Owner in accordance with § 2206.

Owner – both an Inclusionary Development Owner and an Inclusionary Unit Owner.

Rent and Price Schedule – the rent and price schedule published in the *D.C. Register* pursuant to § 103(b) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(b)).

Rental Inclusionary Development – the portion of an Inclusionary Development that includes, or will include, Inclusionary Units that will be leased to Households.

Rental Inclusionary Unit – an Inclusionary Unit that will be or has been leased to a Household.

Tenant – a Household that occupies a Rental Inclusionary Unit.

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics pursuant to the authority set forth in D.C. Code §1-1001.05(a)(14) hereby gives notice of the adoption of the following amendments to 3 DCMR Chapter 1, "Organization of the Board of Elections and Ethics." The Board took final rulemaking action with respect to these amendments at a regular meeting on Wednesday, May 6, 2009.

The amendments: 1) reflect the Board's authority to appoint the Director of the Office of Campaign Finance; 2) elaborate on the procedure for Board meetings, and; 3) clarify matters that may be discussed during Board executive sessions.

No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the D.C. Register on March 20, 2009, at 56 DCR 2271. These amendments will be effective upon publication of this notice in the D.C. Register.

Section 101 of Chapter 1 of 3 DCMR, "Office of Campaign Finance , " shall be amended as follows:

1) Subsection 101.1 is amended by striking the phrase "the Mayor with the advice and consent of the Council" and inserting the phrase, " , and serves at the pleasure of, the Board".

Section 102 of Chapter 1 of 3 DCMR, "Meetings of the Board of Elections , " shall be amended by adding new subsections 102.14 through 102.22 to read as follows:

"102.14 All meetings of the Board, with the exception of executive sessions, as that term is defined in section 103 of this chapter, shall be open to the public.

102.15 The proposed agenda for each Board meeting shall be posted in the office of the Board and on its website at least twenty-four (24) hours prior to a meeting.

102.16 Copies of the agenda shall be available to the public at the meeting.

102.17 Nothing in this section shall preclude the Board from amending the agenda at the meeting.

102.18 A meeting of the Board shall be held once each month in accordance with a schedule to be established by the Board, and additional meetings may be called as needed by the Board.

- 102.19 Meetings shall be held at the time and place the Board or the Chairman designates.
- 102.20 Meetings may be adjourned from time-to-time.
- 102.21 If the time and place of resumption is publicly announced when the adjournment is ordered, no further notice shall be required.
- 102.22 Any individual who is deemed by the Board Chairman to be disruptive to the meeting may be removed therefrom.”

Section 103 of Chapter 1 of 3 DCMR, “Executive Sessions ,” shall be amended as follows:

- 1) Paragraph 103.2 (a) is amended by deleting the phrase “and recruitment” and inserting the phrase “matters, including the recruitment, appointment, employment, assignment, promotion, discipline, compensation, removal, or resignation of employees, or other individuals over whom it has jurisdiction” in its place.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of section 5(3)(A) and 5(3)(E) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002, D.C. Law 14-137, D.C. Official Code § 50-921.04(3)(A) and (3)(E) (2008 Supp.), and section 6(a)(1) of the District of Columbia Traffic Act, 1925, approved March 3, 1925, 43 Stat. 1121, D.C. Official Code § 50-2201.03(a)(1) (2008 Supp.), hereby gives notice of the adoption of the following rulemaking that amends Chapters 26, 40, and 99 of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR). The new provisions define a work zone for the purpose of issuing fines, stipulate the location for signs marking work zones, and increase the fines for infractions occurring in a work zone.

A notice of proposed rulemaking on this issue was published in the D.C. Register on March 20, 2009 at 56 DCR 2287. No comments were received. These rules shall become effective upon publication in the D.C. Register.

Title 18, DCMR is amended as follows:**Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS, is amended by adding a new subsection 2600.2 to read as follows:**

- 2600.2 If a civil infraction listed in § 2600.1 occurs within a work zone area, delineated by signs as required by § 4040, an additional fine equal to the fine for the civil infraction shall be issued to the driver.

Chapter 40, TRAFFIC SIGNS AND RESTRICTIONS AT SPECIFIC LOCATIONS, is amended by adding a new section 4040 to read as follows:

- 4040 Work Zones
- 4040.1 The Director shall require the placement of WORK ZONE signs, which conform to the specifications established by the Chief Engineer of the District of Columbia, at the point of ingress of highway and roadway work zone locations.
- 4040.2 Persons managing work zones are required to install WORK ZONE signs at all ingress points to a work zone.
- 4040.3 Persons managing work zones are required to remove or cover WORK ZONE signs when workers are not actually performing work in their official capacity.

Chapter 99, DEFINITIONS, is amended by adding a new definition to section 9901 to read as follows:

Work Zone – the area of a highway or roadway subject to construction, maintenance, or utility work as regulated in Title 24, DCMR. The work zone includes the area delineated by and within all traffic control devices erected or installed to guide vehicular, pedestrian, and bicycle traffic.

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

and

Z.C. ORDER NO. 03-10A

Z.C. Case No. 03-10A

(Text Amendment – 11 DCMR)

(Technical Correction to Zoning Commission Order No. 03-10)

January 26, 2009

The Zoning Commission for the District of Columbia (the "Commission"), 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 (2001 ed.)), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of the following text amendments to Chapter 21 (Off-Street Parking Requirements), § 2104.1 (Exceptions to the Schedule of Requirements: Nonresidential Structures near Metrorail Stations).

Because this action is technical in nature, no public hearing is required, pursuant to the Consent Calendar provisions set forth in 11 DCMR § 3030 and, for that same reason no referral to was required. No changes were made to the text amendments as published in a notice of proposed rulemaking in the *D.C. Register* ("DCR") on December 26, 2008, at 55 DCR 12964. No comments were received in response to the notice of proposed rulemaking. The Commission took final action to adopt the amendments at a public meeting on January 26, 2009. The final rulemaking is effective upon publication of this notice in the *D.C. Register*.

Title 11 DCMR (Zoning), Chapter 21, OFF-STREET PARKING REQUIREMENTS, § 2104, EXCEPTIONS TO THE SCHEDULE OF REQUIREMENTS: NONRESIDENTIAL STRUCTURES NEAR METRORAIL STATIONS, § 2104.1, is hereby amended to read as follows (new language shown in **bold underlined** text and deleted wording is shown in ~~strikethrough~~ lettering):

2104.1 Except as ~~otherwise~~ provided in § 2104.2, ~~the Board of Zoning Adjustment is authorized to reduce the number of parking spaces required under § 2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty five percent (25%)~~ **shall be seventy-five percent (75%) of the amount otherwise ordinarily required under § 2101.1 if the building is located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance and** ~~provided:~~

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

On November 20, 2008, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at its public by a vote of **4-0-1**

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(Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; third Mayoral appointee position vacant, not voting).

On January 26, 2009, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to adopt; third Mayoral appointee position vacant at the time of the initiation of the case, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on May 15, 2009.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 08-09
Z.C. Case No. 08-09
(Text and Map Amendments - 11 DCMR)
(Sixteenth Street Heights Overlay – Addition of SSH 2 District)
April 27, 2009

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01); having held a public hearing and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of amendments to the Zoning Map of the District of Columbia and to the text of § 1551 of the Zoning Regulations (Title 11 DCMR).

The amendments designate the area that currently comprises the Sixteenth Street Heights Overlay District as the SSH-1 District, adds properties located the south of the SSH 1 District to the overlay, and designates the area encompassing those added properties as the SSH-2 District.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on November 7, 2008, at 55 DCR 11546. A discussion of the comments received may be found under the heading “Comments and additional government reports received”.

The Commission took final action to adopt the amendments at a public meeting on April 27, 2009. The changes made to the proposed text are discussed *infra*. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

By Order Number 757, the Commission established and mapped the SSH Overlay District. The text and map amendments became effective upon their publication in the *D.C. Register* on July 29, 1994.

The existing SSH Overlay District was applied to all R-1-B properties in the area between 16th Street and Rock Creek Park on the west, Military Road and Missouri Avenue on the north, 14th Street on the east, and Colorado Avenue on the southeast. (11 DCMR § 1551.2.) The overlay was established to conserve and enhance the stability of the low density, single-family neighborhood for housing and neighborhood-related uses, to control the further conversion of residential housing to nonresidential uses in order to maintain the housing supply, and minimize the external negative impacts of new nonresidential uses in order to preserve neighborhood quality within a framework of improved public review and control over the external effects of nonresidential uses.

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To accomplish these purposes, the SSH Overlay subjects “proposed new nonresidential use or an expansion of an existing nonresidential use in excess of ten percent (10%) of gross floor area” to special exception review. (11 DCMR § 1553.2.) Although not required to do so by law, the Commission identified the three “key findings” for applying the overlay to the properties mapped:

- (a) Over a period of years, approximately one in every ten (10) houses in the neighborhood has been converted to a nonresidential use, a much higher ratio than has been identified for any other R-1-zoned neighborhood in the District of Columbia; the neighborhood accommodates a significant number and range of human service facilities and private institutions to an extent that new and significantly expanded nonresidential use facilities should be governed by improved public review to ameliorate adverse impacts on immediate and nearby neighbors and preserve a predominantly single-family residential character;
- (b) The neighborhood boundaries are well established and encompass a significant geographic area; and
- (c) The District of Columbia executive branch and councilmembers have identified the number of nonresidential uses and the conversion of houses to these uses in this neighborhood as a serious planning and enforcement problem for more than ten (10) years, as reflected in the legislative history of adopted provisions in the Comprehensive Plan.

(11 DCMR § 1551.4.)

Description of Text Amendment

The amendments designate the area encompassing those properties presently mapped in the overlay as the SSH-1 District and establishes an SSH-2 District that comprises R-1-B properties bounded by 16th Street on the west, Colorado Avenue on the north, 14th Street on the east, and Decatur Street to the south (“New Area”). Although the properties to be included in the SSH-2 District require the same protections as are afforded the SSH-1 properties, the factors that justify the imposition of these protections to the New Area are somewhat different, but equally compelling. Therefore, a separate set of the “key findings” is added for the SSH 2 District.

Relationship to the Comprehensive Plan

The SSH-1 and -2 Districts are located in the Rock Creek East Planning Area. The area is described by the Comprehensive Plan as having a higher than average percentage of single-family homes and home ownership:

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More than 60 percent of the housing units in Rock Creek East are single family homes, compared to 39 percent citywide. The 2000 Census reported that 24 percent of the area's homes were single family detached units and 39 percent were single family attached units (row houses and townhouses). Only 18 percent of the area's housing stock consists of multi-family buildings of 20 units or more, compared to 31 percent for the city as a whole.

The home ownership rate in Rock Creek East is higher than in the city as a whole. The 2000 Census reported that 59 percent of the households in the Planning Area were homeowners (compared to 41 percent in the District) and 41 percent were renters (compared to 59 percent in the District). About 61 percent of the area's residents lived in the same house in 2000 as they did in 1995. This compares to a citywide average of 46.9 percent, and is indicative of the stability of the Rock Creek East community.

(10 DCMR §§ 2204.1, 2204.2.)

One of the planning and development priorities reflected in the Comprehensive Plan's Rock Creek East Area Element is the community's concern for preserving the stability of the area's residential character:

Residents of Rock Creek East have expressed concerns about the growth of particular land uses, including group homes, churches, and related facilities such as day care centers and social service centers. The Planning Area's inventory of large homes, many located on major transit lines, has made it an attractive choice for social service providers and community based residential facilities. Issues relating to safety, parking, and neighborhood character have been raised, particularly in areas where group homes are clustered. Residents seek a stronger role in decisions on the siting and management of such facilities, and desire increased coordination with group home operators. There are also issues connected to code enforcement, related not only to special needs housing but to broader issues such as unpermitted construction and blighted properties. 2207.

(10 DCMR § 2207 (e).)

The Comprehensive Plan identifies several policies to guide growth and neighborhood conservation decisions in the Rock Creek East Planning Area that are relevant to this case:

Policy RCE-1.1.1: Conservation of Low Density Neighborhoods

Maintain and conserve the attractive, stable neighborhoods of the Rock Creek East Planning Area. Any new development in the Planning Area should be attractively designed and should contribute to the community's positive physical identity.

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Policy RCE-1.1.2: Design Compatibility

Ensure that renovation, additions, and new construction in the area's low density neighborhoods respects the scale and densities of adjacent properties, avoids sharp contrasts in height and mass, and preserves parklike qualities such as dense tree cover and open space.

(10 DCMR §§ 2208.2, 2208.3.)

Accordingly, the map and related text amendments are not inconsistent with the Comprehensive Plan.

Set Down Proceeding

ANC 4C initiated this rulemaking by filing a petition to amend the Zoning Map on April 15, 2008, and a petition to amend the Zoning Regulations on April 24, 2008. The April 15, 2008 petition requested that the Commission apply the SSH Overlay District to the New Area. Attached to the document was a resolution indicating that ANC 4C adopted a resolution in support of the petition of at a properly noticed meeting, attended by a proper quorum, and that the ANC had voted in favor of the resolution. The April 24, 2008 petition requested conforming amendments to the text of Zoning Regulations.

The Commission set down the case for a public hearing as a rulemaking case at its June 9, 2008 public meeting.

Public Hearing

The Commission held a public hearing on September 22, 2008. In his opening remarks, the Commission Chairman noted that the Commission received a motion to dismiss the rulemaking proceeding filed by the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints ("Church"). Because there is no motions practice in a rulemaking proceeding, the Commission considered the motion and associated materials as part of the Church's testimony.

At the hearing, Ronald Bland testified in support of the amendments as the authorized spokesman of the petitioner ANC 4C. Mr. Bland testified that the ANC believed the amendments were consistent with the provisions of the Comprehensive Plan that call for stabilizing low and moderate density residential neighborhoods. Mr. Bland further testified of threats to the stability of the community, namely that two residential structures were recently razed and were being used for parking, and that a 33,000 square foot nonresidential facility is being proposed that is not compatible with the neighborhood.

Doreen Thompson, Lawrence Jones, and Patricia Cooper testified in support of the amendments on behalf of the 16th Street Heights Collaborative, an unincorporated association formed to

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support the amendments. They testified that (1) the neighborhood's residential character was challenged by the presence of two major institutional uses located just outside its borders, the Carter Barron Amphitheater complex, the Metro northern bus launch, and by over 50 institutional uses located in the neighborhood; (2) that these institutional uses had negative impacts on the residential quality of the neighborhood in the form of increased traffic, trash, noise, and in other ways; (3) that there were a number of factors, including access to major arterial roads, the presence of large residential structures, and the existing regulatory environment, that made the 16th Street Heights neighborhood, including the expanded overlay area particularly attractive to institutional uses; (4) that the Comprehensive Plan recognizes that large homes in the neighborhood are attractive to institutional uses; and (5) that they believed the expanded overlay area met the criteria established in § 1551.4 of the Zoning Regulations and therefore mapping the Overlay District in the area was warranted.

The Office of Planning ("OP") testified in support of the amendments because they were consistent with the Comprehensive Plan and because the expansion area met the three criteria established in § 1551.4. OP did not provide figures to support its contention that the conversion rate of existing homes in the New Area was comparable to the 10% conversion rate indicated in that subsection. As to the extent to which the New Area accommodated nonresidential uses, OP concluded nonresidential uses occupied 38.96% of the land area.

Carolyn Brown, Esquire testified in opposition to the amendments on behalf of the Church. Ms. Brown contended that the amendments were unjustified because there was insufficient conversion of residential uses to nonresidential uses in the New Area, and because they were inconsistent with the Comprehensive Plan, particularly the land use policy that encourages the presence of churches in the District. (10 DCMR § 311.8.) She further testified that the amendments violated the free exercise clause of the Constitution, the Religious Freedom Restoration Act ("RFRA"), and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") by allegedly singling out the Church for differential treatment.

As to the conversion issue, the Church provided statistics for the rate of conversion from residential to nonresidential uses within the New Area since 1994, the year the overlay was established. According to these statistics, a total of 143 properties existing in 1994; of which 13 were nonresidential, 128 were residential, and two were vacant. The Church further asserted that two of the 128 homes existing in 1994 have since been converted to a nonresidential use, resulting in a conversion rate of 1.56%.

Concerning the extent to which the New Area accommodates nonresidential uses, the Church did not analyze the percentage of land area occupied by nonresidential uses in the New Area, but rather indicated that the 15 existing nonresidential uses represent 10.6% of the 141 improved properties and 10.4% of all 143 properties.

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Ms. Brown's presentation reiterated the substantive grounds for dismissal stated in the Church's "motion". In addition the Church also sought dismissal because the ANC resolutions calling for the filing of the petitions did not specifically authorize its Chair, Joseph Martin, to do so.

Proposed Action

The Commission took proposed action at a properly noticed public meeting held on October 20, 2008 to authorize the publication of a Notice of Proposed Rulemaking pursuant to the District of Columbia Administrative Procedure Act, and the referral of the proposed text and map amendments to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. The Notice of Proposed Rulemaking was published in the *D.C. Register* on November 7, 2008, at 55 *DCR* 11546.

NCPC Referral and Response

NCPC, through a delegated action dated December 4, 2008, found that the proposed map and text amendments would neither adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital. The Executive Director's report included the following discussion:

The Free Exercise Clause of the First Amendment of the U.S. Constitution, and two statutes implementing that Clause, bear on the District of Columbia's action here. The statutes are the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). ...

We note as a matter of federal interest that the District, before moving forward, must make the factual determination that the action of extending the overlay is non-discriminatory within the meaning of these laws.

Comments and Additional Government Reports Received

The Commission received two written comments on the proposed rule. The first was submitted on behalf of the Downtown Cluster of Congregations and requested that the "Zoning Commission undertake a full, updated review of the likely impacts of the Religious Land Use and Institutionalized Persons Act of 2000, and the Religious Freedom Restoration Act upon this matter." The letter was premised on the author's belief "that the National Capital Planning Commission members believe that these statutes could well impact this matter, but believed that any such considerations were the duty of the DC Zoning Commission prior to referral to it."

The second comment was submitted on behalf of the Church. The Church questioned what it characterized as the Commission's conclusion that a 10% conversion rate existed within the New Area. In response to the Commission's concerns about the length of the period used to determine the conversion rate, the Church reanalyzed its findings based upon historical records

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dating back to the establishment of the Commission in 1920. According to the Church there were 143 properties existing at that time, of which two were vacant and five were devoted to nonresidential uses. The Church treated the two vacant lots as residential properties and then subtracted the original five nonresidential properties from that figure, to arrive at a total of 138 original residential properties. The Church then indicated that eight of these have been converted to nonresidential uses. Rather than divide eight by 138, the Church used 143 as the denominator (thus adding back in the nonresidential property it had subtracted), which resulted in a conversion rate of 5.6 percent. Had the Church divided the eight converted properties by the 136 properties originally built as residential uses (thereby excluding the two historically vacant lots and the five original nonresidential uses), the conversion rate would be 5.9%.

The Church also contended that OP's claim that 38.96% of the land in the New Area was occupied by nonresidential uses was erroneous, particularly because it included the Kingsbury Center. That facility occupies all 173,026 square feet of the land area in Square 2711, making it the largest single occupier of land in the New Area. Along with its R-1-B designation, Square 2711 is currently zoned in the Diplomatic Mixed Use Overlay pursuant to Zoning Commission Order No. 520, February 1987. The Church claimed that no R-1-B property already mapped in an overlay may also be mapped SSH.

Following proposed action, OP sought to determine whether the percentage of land occupied by nonresidential uses within the New Area was comparable to what existed in other R-1-B zone districts. Neither the first key factor (§ 1551.4) (a)) nor the order establishing the overlay indicate the actual number of nonresidential uses accommodated by the originally mapped neighborhood, or why the Commission considered that amount to be "significant". Although the first clause of that paragraph indicates that the Commission compared the 10% conversion rate to other R-1 properties, no similar analysis is indicated for the percentage of existing nonresidential uses.

At a public meeting held on February 23, 2009, the Commission was made aware that OP had completed its analysis and granted OP's request to reopen the record to share its findings. OP advised the Commission that the percentage of land occupied by nonresidential uses in all R-1-B zoned land in the District is 8%; the percentage of land occupied by nonresidential uses in the existing SSH Overlay is 6.9%; and the percentage of land occupied by nonresidential uses in the New Area is 19.1%.

The Commission requested that OP reduce its findings to writing, and instructed the Office of Zoning to circulate those written findings to the petitioner and to anyone who commented. The Commission also set a deadline for those persons or entities to comment on the OP analysis.

OP submitted a supplemental report on March 2, 2009, which essentially repeated the occupancy findings it orally shared with the Commission, except that the report noted that the 19.1% occupancy percentage excluded the Kingsbury Center, and that if the land areas of its square was

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included in the lot land area calculations, the percentage of land occupied by nonresidential uses in the New Area rises to 35.5%.

The report also computed nonresidential occupancy based upon the number of buildings. The report found that there were 139 improved lots in the New Area, of which 11 or 12 contained nonresidential uses (depending upon whether the Kingsbury Center was included). This resulted in a nonresidential occupancy rate by building of 8.6 or 7.9 percent respectively.

Lastly, the report included a section that discussed the construction history of the New Area. Like the Church, OP concluded that there were 143 properties constructed between 1906 and 1936. OP further indicated that there were 4 original nonresidential properties and 12 existing ones. These are essentially the same figures used by the Church and result in a conversion rate of either 5.6 or 5.8 percent depending upon whether the eight converted properties are divided by all 143 overlay lots or just the 137 originally occupied by residential uses using OP's investigation. If the Kingman Center is counted, the rate increases to 6.2 or 6.5 percent.

By letter dated March 3, 2009, the Office of Zoning circulated OP's supplemental report to the petitioner ANC 4C, and the other entities that commented on the notice of proposed rulemaking, including the Church and the Downtown Cluster of Congregations.

The Church submitted a response dated March 17, 2009. The response did not quarrel with the land use occupancy rates found by OP, but instead declared the issue relevant.

The criteria established by the Commission under section 1551.4 (a) is based solely on the number of residential properties converted to nonresidential uses. Use of any different standard would require the filing of a new text amendment application and consideration by the Zoning Commission on whether to set it down for a hearing.

As proof of its contention, the Church included a document entitled "Non-Residential Use Properties, 1992" submitted by the Sixteenth Street Heights Civic Association in support of the establishment of the original overlay. After listing the properties and uses within the proposed overlay area, the document contained the following summary.

Total homes surveyed: 326
Homes converted to other than single-family residences: 44
(13 percent of residential homes in neighborhood used for non-residential purpose).

The Church further refined its conversion rate analysis to arrive at a figure of 4.2%.

Disposition of Factual and Legal Issues

Although this petition is a rulemaking, which normally only involves the resolution of policy considerations, this case also required the Commission to consider objective criteria as well. In

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addition, it has been suggested that there are federal statutory and constitutional issues involved. Although the Commission is aware that the impetus of this petition concerned a proposed place of worship within the New Area, it cannot and has not considered the advisability or potential impact of that particular project. To do so would turn this rulemaking into a special exception. The point of this rulemaking is to consider whether new and significantly expanded nonresidential use facilities should be subject to special exception review in order for there to be an “improved public review to ameliorate adverse impacts on immediate and nearby neighbors and preserve a predominantly single-family residential character.” (11 DCMR § 1551.4 (a).)

Authority to file petition.

As to the procedural objection of the Church, the Commission does not believe that the ANC resolution needed to specifically authorize its Chair to file these petitions on its behalf. However, even if Mr. Martin was not authorized by the ANC to file the petition, he was permitted by the District of Columbia Administrative Procedure Act to do so. Section 6 (c) of that Act provides that “[a]ny interested person may petition the Mayor or an independent agency requesting the promulgation, amendment, or repeal of any rule.” (D.C. Official Code § 2-505(b).)

Appropriateness of requested text and map amendments.

Turning to the substantive issues presented, the Commission notes that the SSH Overlay text includes factual findings that appear intended to provide guidance concerning any future application of these zoning controls to other areas. *Compare* Chapter 13. Neighborhood Commercial Overlay District, where the only precondition for the imposition of development incentives and controls is that the properties are within a neighborhood shopping area.

And although the SSH overlay was named for the neighborhood that comprised its original boundary, the Commission disagrees with the Church that only areas that share the same name may be afforded similar controls. The Zoning Regulations are not about nomenclature, but exist to establish such land use controls as are necessary to the public welfare throughout the District. The critical consideration for applying the zoning controls of this overlay to the New Area is whether the introduction of new nonresidential uses, or the expansion of existing ones, threatens to destabilize it. The three key factors set forth on § 1551.4, particularly the first one, represent indicia of destabilization, but not necessarily the exclusive ones.

Nevertheless, in this instance, the three findings, when applied to the New Area, demonstrate that this neighborhood requires the protections of the SSH Overlay.

First, the Commission disagrees with the Church that the first finding only concerns the conversion of residential uses to nonresidential purposes. Facially, the provision addresses both the rate of conversion and the extent to which the neighborhood accommodated nonresidential

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uses; separating each concern with a semi-colon. Indeed, it is that latter factor that appears to have been given the greater weight. The finding reads in part:

Over a period of years, approximately one in every ten (10) houses in the neighborhood has been converted to a nonresidential use, a much higher ratio than has been identified for any other R-1-zoned neighborhood in the District of Columbia; the neighborhood accommodates a significant number and range of human service facilities and private institutions *to an extent* that new and significantly expanded nonresidential use facilities should be governed by improved public review

(11 DCMR § 1551.4 (a) (emphasis added).)

The text preceding the semicolon is introductory in nature and could be entirely eliminated without diluting the essence of the finding. It is the “extent” to which the neighborhood accommodated nonresidential uses that compelled greater public review, not the conversion rate. The Church’s position is also contradicted by its own proffer of proof. The computation of nonresidential uses before the Commission in 1994 arrived at the following analysis.

Total homes surveyed: 326

Homes *converted* to other than single-family residences: 44

(*13 percent* of residential homes in neighborhood *used* for non-residential purpose).

(Emphasis added).

The Commission clearly considered both the conversion percentage and the occupancy percentage when establishing the overlay, although both rates turned out to be the same. In this case, both the Church and OP agree that that the conversion and occupancy rates differ within the New Area, principally because the 1994 analysis did not include any originally existing nonresidential uses, but only calculated how many of the existing 326 houses were for nonresidential purposes.

Depending upon how one manipulates the figures, the conversion rate ranges from 4.2 to 6.5 percent. For the purposes of this Order, the Commission accepts this higher figure, only because it finds that even this highest rate of conversion alone would not suffice to impose the overlay’s controls on the New Area.

Nevertheless, Commission concludes such controls are warranted because the extent of land area occupied by nonresidential uses in the New Area is far greater than that found in other R-1-B zones, including those currently mapped in the overlay. This neighborhood has clearly reached the point where “new and significantly expanded nonresidential use facilities should be governed by improved public review”. *Id.*

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As noted earlier, the Commission in 1994 apparently made no comparison as to the land occupancy rate as it had done with the conversion rating; finding that the conversion of one out of ten homes “a much higher ratio than has been identified for any other R-1-zoned neighborhood”. *Id.* As a result of the OP analysis such a comparison is available for this proceeding. The analysis shows that the amount of land area occupied by nonresidential uses in the New Area is almost three times that of what is found in other R-1-B zones including those mapped in the original overlay, and that is without including the land area occupied by the Kingsbury Center. These figures make a compelling case for the Commission’s immediate intervention.

As to the other key findings, the Commission concludes that the “neighborhood boundaries are well established and encompass a significant geographic area”. (11 DCMR § 1551.4(b).) As to § 1551.4(c), while the discussion of this area in the current comprehensive plan may not mirror those expressed with respect to the originally mapped area, it is clear that concern for the stability of the New Area was raised. Moreover, it would not serve the public interest for the Commission to insist that this or any finding be made, when the empirical data clearly show that the stability of an R-1-B neighborhood is at risk.

Because a somewhat different set of findings justify the Commission’s establishment of the SSH 2 district than justified the original 1994 mapping; those SSH 2 findings are set forth in a new § 1554.7. In addition, provisions have been added to separately describe the applicability of the SSH-1 and SSH-2 districts. These changes from the proposed text are in response to the comments and reports received and, therefore, do not require the publication of a second notice of proposed rulemaking.

Constitutional and statutory consideration

The religious expression issues raised by the Church, NCPC, and the Downtown Cluster of Congregations are not new. The question of whether the SSH Overlay places a substantial burden on the free exercise of religion was addressed in 1994 with the adoption of the original text. The Office of Corporation Counsel (now the Office of Attorney General) concluded that the overlay’s requirement of a special exception for new nonresidential uses did not place a “substantial burden” on the free exercise of religion and therefore did not violate RFRA. The Commission agreed when it approved the SSH Overlay.

This Commission does not believe it must revisit settled legal issues unless subsequent case law or adopted legislation calls its conclusion into question. In fact, several courts subsequently found RFRA invalid. In order to cure the constitutional defect identified, Congress adopted RLUIPA. The new statute continued to prohibit land use actions that would substantially burden the free exercise of religion. Specifically, § 3 provides that no local government may:

impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless

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the government demonstrates that imposition of the burden on that person, assembly, or institution ... is in furtherance of a compelling governmental interest ... and is the least restrictive means of furthering that compelling governmental interest.

(42 U.S.C. § 2000cc (a).)

Since this standard is essentially the same as stated in RFRA, and the interpretation given it by case law has not changed, the Commission will not revisit the legality of the overlay on that basis.

However, § 3 of RLUIPA also added a provision (42 U.S.C. § 2000cc (b)) prohibiting three specific forms of discrimination and exclusion. Although there is case law suggesting that RLUIPA does not apply to any special exception review, *see Cambodian Buddhist Soc'y of Conn., Inc. v. Planning & Zoning Comm'n*, 941 A.2d 868 (Conn. 2008), the Commission will nevertheless address each prohibition.

1. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

The overlay does not violate this provision because it applies to all nonresidential uses.

2. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

The overlay singles out no particular assembly or institution. All places of worship are treated the same, and all such uses are treated the same as other nonresidential uses.

3. No government shall impose or implement a land use regulation that—
 - (A) totally excludes religious assemblies from a jurisdiction; or
 - (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

The overlay does not bar religious assemblies from the District of Columbia or from the overlay area, nor does it place unreasonable limits on the category of uses and buildings stated in paragraph 3(B). Instead it only requires that all new or expanded nonresidential uses be subject to special exception review to determine whether their impact will be compatible with the neighborhood.

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Legal Sufficiency Review

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the affected ANC's written recommendation. The Commission has carefully considered the ANC's recommendation for adoption of the text and map amendments and concurs in its recommendation.

Final Action

At its properly noticed April 13, 2009 public meeting, the Commission took final action to approve the proposed text amendments and adopt this Order based upon the reasons stated herein. Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby APPROVES the following amendments to the Zoning Map and § 1551 and [of the Zoning Regulations, Title 11 DCMR.

A. The Zoning Map is amended as shown in the following table:

Squares	Zone District
2708 through 2716	R-1-B to SSH/R-1-B

B. Chapter 15, MISCELLANEOUS OVERLAY DISTRICTS, Section 1551, Sixteenth Street Heights Overlay District (SSH), is amended as follows (new text is existing provisions is shown in **bold and underlined** text, deleted text is shown in ~~striketrough~~ text):

1. By deleting § 1551.2.
2. By amending § 1551.3 to read as follows:

~~1551.3~~ **1551.2** The purposes of the SSH Overlay District are to:

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- (a) Promote the conservation, enhancement, and stability of this low-density, single-family neighborhood for housing and neighborhood-related uses;
- (b) Control the **expansion of nonresidential uses, and/or** further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external negative impacts of new nonresidential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality; and
- (c) Allow ~~the neighborhoods~~ to continue to provide a range of health and social service facilities as well as private institutions that provide cultural and religious enrichment and economic vitality, but within the framework of improved public review and control over the external effects of nonresidential uses. The objective is to make more compatible the Comprehensive Plan's goals and policies for maintaining the quality and stability of residential neighborhoods with other policies related to the reasonable provision of human services throughout the District of Columbia.

3. By inserting the following new sub-section:

1551.3 The Sixteenth Street Heights (SSH) Overlay District is comprised of the SSH-1 and SSH-2 Districts.

4. By inserting the following new sub-section:

1551.4 The SSH-1 Overlay District encompasses the geographic area in northwest Washington generally bounded by 16th Street and Rock Creek Park on the west, Military Road and Missouri Avenue on the north, and 14th Street on the east, and Colorado Avenue on the southeast. This overlay zone is applied to properties zoned R-1-B in the following squares and portions of squares: 2718, 2719, 2720, 2720W, 2721, 2721W, 2722, 2722W, 2723, 2723W, 2724, 2724W, 2725, 2741, 2742, 2796, and 2799.

5. By amending § 1551.4 to read as follows:

~~1551.4~~ **1551.5** The provisions of the SSH **SSH-1** Overlay District shall be applied to the 16th Street Heights neighborhood **properties identified in § 1551.4** based on the following key findings:

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- (a) Over a period of years, approximately one in every ten (10) houses in the **SSH-1 District** has been converted to a nonresidential use, a much higher ratio than has been identified for any other R-1-zoned neighborhood in the District of Columbia; the neighborhood accommodates a significant number and range of human service facilities and private institutions to an extent that new and significantly expanded nonresidential use facilities should be governed by improved public review to ameliorate adverse impacts on immediate and nearby neighbors and preserve a predominantly single-family residential character;
- (b) The **SSH-1** neighborhood boundaries are well established and encompass a significant geographic area; and
- (c) The District of Columbia executive branch and councilmembers have identified the number of nonresidential uses and the conversion of houses to these uses in this neighborhood as a serious planning and enforcement problem for more than ten (10) years, as reflected in the legislative history of adopted provisions in the Comprehensive Plan **in effect on July 29, 1994**.

6. By inserting the following new sub-sections:

1551.6 The SSH-2 Overlay District encompasses the geographic area in northwest Washington generally bounded by 16th Street on the west, Colorado Avenue on the north, 14th Street on the east, and Decatur Street to the south. This overlay zone is applied to properties zoned R-1-B in the following squares and portions of squares: 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, and 2716.

1551.7 The provisions of the SSH-2 Overlay District shall be applied to the properties described in 1551.6 based on the following key findings:

- (a) **More than 20% of the residentially zoned land is used for nonresidential purposes;**
- (b) **The neighborhood boundaries are well established and encompass a significant geographic area; and**
- (c) **The District of Columbia Comprehensive Plan has identified the number of nonresidential uses in the neighborhood as a problem.**

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On October 20, 2008, upon motion of Commissioner May, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** the petition at its public meeting by a vote of **3-1-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May to approve; Michael G. Turnbull opposed; Curtis L. Etherly, Jr., not present, not voting).

On April 27, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-1-1** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries, not present, not voting; third Mayoral appointee position vacant at the time of the hearing, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on May 15, 2009.