

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To implement the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia by requiring the Mayor to promulgate rulemaking and to establish and publish maximum rental and sales prices of the required affordable housing set-aside units, to require the District of Columbia Housing Authority to administer the Inclusionary Zoning Program if delegated this responsibility by the Mayor who may alternatively delegate the responsibility to a subordinate agency, to amend the Office of Administrative Hearings Establishment Act of 2001 to expand its jurisdiction to infractions of this act and its rules, and to require annual reports by the Mayor to the Council and the Zoning Commission evaluating the effectiveness of the Inclusionary Zoning Program and recommending any necessary amendments; to amend the District of Columbia Administrative Procedure Act to allow for requests for relief from the Zoning Commission's set-aside requirement to be decided without the use of contested case procedures, including hearings; to amend the Housing Production Trust Fund Act of 1988 to allow for the deposit of fines collected pursuant to this act; and to amend section 47-902 of the District of Columbia Code to exempt, from the transfer tax on real property, the transfer of property to a qualifying low- or moderate-income household pursuant to the Inclusionary Zoning Program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Inclusionary Zoning Implementation Amendment Act of 2006".

TITLE I. ZONING IMPLEMENTATION

Sec. 101. Definitions.

For the purposes of this title, the term:

- (1) "Housing Production Trust Fund" means the fund established by the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801 *et seq.*).
- (2) "Inclusionary Development" means developments subject to the Inclusionary Zoning Program pursuant to 11 DCMR § 2602.1.
- (3) "Inclusionary unit" means a unit set aside for sale or rental to low- and moderate-income households as required by the Inclusionary Zoning Program.

(4) “Inclusionary Zoning Program” means all of the provisions of Chapter 26 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR 2600 *et seq.*), this act, and the regulations promulgated under the authority of this act.

(5) “Low-income household” means a household of one or more individuals with a total annual income adjusted for household size equal to or less than 50% of the Metropolitan Statistical Area median as certified by the Mayor.

(6) “Moderate-income household” means a household of one or more individuals with a total annual income adjusted for household size equal to between 51% and 80% of the Metropolitan Statistical Area median as certified by the Mayor.

Sec. 102. Unlawful Acts.

(a) No inclusionary unit may be sold or leased to any person not authorized by the Mayor to purchase or rent the unit, except as may be permitted by regulation.

(b) Except as provided in Chapter 26 of Title 11 of the District of Columbia Municipal Regulations, the zoning regulations, no inclusionary unit may be sold or leased for more than the maximum rent or purchase price established by the Mayor pursuant to section 103, unless the unit is sold to a land trust or similar entity authorized by regulation to purchase such units for resale at prices specified by the Mayor.

(c) It shall be unlawful to construct an Inclusionary Development in a manner inconsistent with a Certificate of Inclusionary Zoning Compliance approved by the Mayor pursuant to section 105.

Sec. 103. Establishment of maximum rent and purchase price; publication requirement.

(a) The Mayor shall establish the maximum rent or purchase price for the first sale of an inclusionary unit based upon either the actual income of the household selected by the Mayor to lease or purchase the unit or based upon a rental and price schedule as follows:

(1) Rents based upon the actual income of a household shall be established so that the household will not expend more than approximately 30% of its annual income on rent and utilities.

(2) Purchase prices based upon the actual income of a household shall be established so that the household will not expend more than approximately 30% of its annual income on mortgage payments, including principal, interest, and property insurance and taxes, home owner association or condominium fees, and utilities.

(3) Maximum rent and purchase prices established through a schedule applicable to low-income households shall be set so that a household earning 50% of the Metropolitan Statistical Area median will expend no more than approximately 30% of its annual income on the applicable housing costs identified in subsections (b) and (c) of this section.

(4) Maximum rent and purchase prices established through a schedule applicable to moderate-income households shall be set so that a household earning 80% of the Metropolitan Statistical Area median will expend no more than approximately 30% of its annual income on the applicable housing costs identified in subsections (b) and (c) of this section.

(b) The initial rental and prices schedule shall be published in the District of Columbia Register. The schedule may be modified as necessary to maintain the affordability of inclusionary units. The initial and revised schedules need not be offered for public comment through publication of a notice of proposed rulemaking, but shall not become effective until publication in the District of Columbia Register. Each published schedule shall identify the assumptions underlying the prices and rents established, such as the mortgage term and the average interest rate, taxes, insurance, condominium fees used.

(c) Except as provided in subsection (d) the purchase price, for the second and all subsequent sales of an inclusionary unit shall equal not more than the purchase price paid by each seller plus the costs of the improvements permitted by regulation to be added to the purchase price, which amount shall be either multiplied by the percentage by which the consumer price index has risen or fallen since the date on which that seller purchased the property, or calculated pursuant to another formula as determined and published by the Mayor.

(d) The purchase price for the second and all subsequent sales of an inclusionary unit sold to the Mayor shall equal the purchase price paid by each seller plus the costs of the improvements permitted by regulation to be added to the purchase price, which amount shall be multiplied by 25% or the percentage that the consumer price index has risen or fallen, whichever is lower, since the date on which that seller purchased the property.

Sec. 104. Enforcement.

(a)(1) A violation of this act or the rules issued under authority of this act shall be a civil infraction for the purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act") and be grounds for revocation of any building permit and certificate of occupancy for the market rate portions of the Inclusionary Development.

(2) Civil fines, penalties, and fees may be imposed as sanctions for infraction of section 102 of this act or any rule promulgated under its authority pursuant to the Civil Infractions Act.

(b) In addition to such fines, penalties, and fees as may be established pursuant to subsection (a) of this section, the following fines shall be imposed for violations of section 102:

(1) Any person found to have sold a inclusionary unit at a price greater than that permitted by the Mayor shall pay a fine equal to the amount by which the purchase price exceeded the price allowed plus 10%.

(2) Any person found to have rented an inclusionary unit for a rent greater than that permitted by the Mayor shall pay a fine equal the amount by which the rent paid exceeded the rent allowed plus 10%. The fine amount shall continue to be paid until the owner provides

proof satisfactory to the Mayor that the rental payment has been reduced to the maximum allowed.

(3) All other violations of the Inclusionary Zoning Program are Class I infractions and subject to the fine schedule set forth at 16 DCMR § 3201.1, as that schedule may be amended.

(c) All fines collected pursuant to this section shall be deposited into the Housing Production Trust Fund.

(d) The Attorney General for the District of Columbia may institute court proceedings to enjoin violations of the Inclusionary Zoning Program.

(e) The District government shall not issue or reissue any license or permit, including a building permit or certificate of occupancy, to any applicant for a license or permit if the applicant is the owner of any Inclusionary Development or unit and found, after a hearing, to be in violation of the Inclusionary Zoning Program until such time as the Mayor certifies that the Inclusionary Development or unit is again in compliance.

Sec. 105. Certificate of Inclusionary Zoning Compliance.

(a) No building permit shall be issued for an Inclusionary Development unless:

(1) The Mayor receives and approves a Certificate of Inclusionary Zoning Compliance, signed by all owners of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program; and

(2) The owner of the Inclusionary Development records a covenant in the land records of the District of Columbia that binds all persons with a property interest in any or all of the Inclusionary Development to construct and reserve the number of inclusionary units indicated on the Certificate of Inclusionary Zoning Compliance, and to sell or rent, as applicable, such units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance for so long as the development remains in existence. The covenant and certificate shall be made part of all future deeds and leases of inclusionary units and shall contain any other provision required by the Mayor.

(b) A certificate of occupancy shall be required for each inclusionary unit.

(c) No certificate of occupancy for any 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 6 months from 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.

(d) The Mayor may, by regulation, require the establishment of an escrow account at the time that a certificate of occupancy is issued for a development permitted by the Board of Zoning Adjustment to satisfy its requirements under the Inclusionary Zoning Program with off-site development. The regulations may provide for the payment of the escrow amount into the Housing Production Trust Fund if the off-site development is not constructed after a certain period of time.

Sec. 106. Ineligibility of Students.

Notwithstanding section 221 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.21), a person enrolled as full-time student in a college or university shall not be eligible to apply to rent or purchase an inclusionary unit unless the annual income of his or her parent or guardian would qualify under the eligibility standards established by the Mayor, or unless the student is a part of a household that otherwise qualifies for the inclusionary unit.

Sec. 107. Authority and responsibilities of Mayor.

The Mayor is authorized to undertake all administrative activities to implement the Inclusionary Zoning Program. The activities which the Mayor shall undertake include:

- (1) Promulgating regulations needed to implement the Inclusionary Zoning Program, including amendments to Title 12A of the District of Columbia Municipal Regulations;
- (2) Establishing the circumstances when the Mayor, the District of Housing Authority, or a 3rd party, including a land trust or a qualified nonprofit organization, may purchase an inclusionary unit for the purpose of reselling it to low- or moderate-income households;
- (3) Advertising the existence of the Inclusionary Zoning Program to the general public, including the process to apply for participation;
- (4) Accepting applications from households seeking to rent or purchase inclusionary units;
- (5) Establishing minimum income requirements;
- (6) Evaluating the eligibility of households submitting applications pursuant to paragraph (4), based upon the eligibility criteria established in Chapter 26 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR 2600 *et seq.*) and other relevant considerations;
- (7) Establishing one or more lists of eligible households, such as one for rental and one for home ownership, and a selection process for determining the order in which such households shall be chosen to rent or purchase available inclusionary units, including the establishment of preference points for residents of the District of Columbia, eligible households in which at least one member works in the District of Columbia, and the length of time that households have been on the wait list;
- (8) Establishing the process by which the owners of Inclusionary Developments or units shall notify the Mayor of the availability of inclusionary units;
- (9) Determining the circumstances under which owners of Inclusionary Developments or units may sell or rent inclusionary units to low- or moderate-income households that have not been selected by the Mayor;
- (10) Establishing minimum size and other standards for inclusionary units;
- (11) Determining the circumstances under which an owner or renter of an

inclusionary unit may temporarily lease the unit;

(12) Establishing the process by which renters of inclusionary units shall be required to periodically certify their continuing eligibility for occupancy and, if no longer eligible, the means by which their leaseholds shall be terminated and their units made available to eligible households; and

(13) Establishing a fee for the review of Certificates of Inclusionary Zoning Compliance submitted in accordance section 104; provided, that the fee shall not exceed the costs of reviewing the certificates and enforcing compliance with the program.

Sec. 108. Agency responsibilities.

(a)(1) The District of Columbia Housing Authority (“DCHA”) shall perform all the functions and duties under the Inclusionary Zoning Program as may be delegated to it by the Mayor.

(2) Nothing in this section shall be construed as preventing the Mayor from delegating any or all of such functions to a subordinate agency.

(b) Notwithstanding Reorganization Plan No. 3 of 1983, effective March 31, 1983, the functions of the Department of Consumer and Regulatory Affairs shall not include any of the functions given to the Mayor under this act, except the functions as may be delegated to it by the Mayor.

Sec. 109. Annual reports.

(a) Beginning on the first anniversary of the effective date of this title, and each year thereafter, the Mayor shall submit a report to the Council and the Zoning Commission, providing:

- (1) The number of inclusionary units produced at each targeted income level;
- (2) The number of inclusionary units produced for sale;
- (3) The number of inclusionary units produced for rent;
- (4) The median income of the households that purchased or rented inclusionary units;
- (5) The number of inclusionary units purchased or rented by DCHA, other District agency, and 3rd parties, for resale to low- or moderate-income households;
- (6) The value of the subsidy, if any, contributed toward the rental or purchase of units by DCHA, other District agency, or 3rd party to make them affordable to low- or moderate-income households;
- (7) The average rent and sales prices for inclusionary units based on number of bedrooms;
- (8) The numbers of waivers or alternative compliance requested and granted;
- (9) An analysis of how much bonus density was actually achieved for each development in which inclusionary units were required; and
- (10) An assessment of whether the Inclusionary Zoning Program has had any adverse

effect on the production of housing or on the value of land in the District, and, if a substantial adverse effect on housing production has been found, whether additional regulatory or legislative incentives or programs should be adopted by the District to mitigate against such adverse effect, and whether changes in the Inclusionary Zoning Program should be considered by the Zoning Commission, such as:

(A) Increasing the allowable bonus density or height of developments where inclusionary units are required;

(B) Increasing the minimum threshold of the number of housing units in a development that triggers the application of the Inclusionary Zoning Program;

(C) Reducing the amount of required affordable housing;

(D) Reducing the minimum set-aside requirements on matter-of-right densities; or

(E) Changing the income levels of the targeted households for inclusionary units.

(b)(1) No later than 5 ½ years after the effective date of this act, the Mayor shall submit a report to the Council that lists the initial purchase price of each inclusionary unit sold during the 5-year period subsequent to the effective date and, for each unit resold, the percentage by which the purchase price exceeded the previous purchase price.

(2) The report shall also include a recommendation on how best to ensure a baseline rate of return for inclusionary unit owners upon resale while maintaining the continued affordability inclusionary units.

TITLE II. CONFORMING AMENDMENTS

Sec. 201. Section 102(8) of District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502), is amended by adding a new subparagraph (E) to read as follows:

Amend
§ 2-502

“(E) Request for relief from the requirements of Chapter 26 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR 2600 *et seq.*), as permitted under that chapter; provided, that such requests shall be approved under such procedures as may be adopted by the Zoning Commission, which procedures need not include a hearing.”.

Sec. 202. Section 6(a) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §2-1831.03(a)), is amended as follows:

Amend
§ 2-1831.03

(1) Paragraph (8) is amended by striking the word “and” after the semicolon.

(2) Paragraph (9) is amended by striking the period at the end and inserting the phrase “; and” in its place.

(3) A new paragraph (10) is added to read as follows:

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"(10) All adjudications involving infractions of the Inclusionary Zoning Implementation Act of 2006, passed on 2nd reading on December 19, 2006 (Enrolled version of Bill 16-779), and the rules promulgated under its authority.”.

Sec. 203. Section 3 (c) the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802), is amended as follows:

**Amend
§ 42-2802**

(a) Paragraph 15 is amended by striking the word "and" at the end.

(b) Paragraph 16 is amended by striking the phrase "balance." and inserting the phrase "balance; and" in its place.

(c) Add a new subparagraph 17 to read as follows:

“(17) All fines collected pursuant to section 103 of the Inclusionary Zoning Implementation Act of 2006, passed on 2nd reading on December 19, 2006 (Enrolled version of Bill 16-779), which shall be used exclusively to fund the Mayor’s purchase of dwelling units for sale or rental to low- and moderate-income households as authorized by section 104(c)of that act.”

Sec. 204. Section 47-902 of the District of Columbia Official Code is amended as follows:

**Amend
§ 47-902**

(a) Paragraph 21 is amended by striking the word "and" at the end.

(b) Paragraph 22 is amended by striking the phrase "as trustee." and inserting the phrase "as trustee; and" in its place.

(c) A new paragraph (23) is added to read as follows:

“(23) Transfers of property to a qualifying low- or moderate-income household pursuant to the Inclusionary Zoning Program established by the Inclusionary Zoning Implementation Act of 2006, passed on 2nd reading on December 19, 2006 (Enrolled version of Bill 16-779).”.

TITLE III. FISCAL IMPACT STATEMENT; APPLICABILITY; EFFECTIVE DATE

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Applicability.

This act shall apply subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia