



*VIA ELECTRONIC MAIL*

April 9, 2012

Ms. Taura Smalls  
Legislative Affairs Specialist  
D.C. Department of Housing and Community Development  
1800 Martin Luther King, Jr. Avenue, S.E.  
Washington, DC 20020

RE: Comments on 14 D.C.M.R. Chapter 22 (“Inclusionary Zoning Implementation”)

Dear Ms. Smalls,

Pursuant to DMPED's March 9, 2012, request for comments (D.C. Register, Vol. 59 – No. 10, p. 002021), the purpose of this letter is to provide the following suggestions regarding the Inclusionary Zoning Implementation regulations at 14 D.C.M.R. §2200 *et seq.*:

1. While section 2200 places the administrative regulations within the context of the zoning regulations and the Inclusionary Zoning Act, further context for certain specific provisions, through cross-references to the relevant zoning regulations, would be helpful. For example:

- a. But for the phrase “in applicable zone districts” in Section 2200.2, the administrative regulations may fail to convey that the Inclusionary Zoning (IZ) program does not apply to any and all residential developments in the District.

***Recommendation:*** Add the phrase “as set forth in 11 D.C.M.R. §2602” to the phrase “in applicable zone districts” in Section 2200.2.

- b. Absent any context or explanation, the reference in section 2202.4 (e) to “offsite compliance of another Inclusionary Development” may appear to be an open-ended alternative to the inclusionary unit requirement within a particular Inclusionary Development.

***Recommendation:*** Add the phrase “as permitted under 11 D.C.M.R. §2607 and” just prior to the phrase “as approved by the Board of Zoning Adjustment” in Section 2202.4.

- c. Absent any context or explanation, the reference in section 2202.4(n) to a “proposed schedule of standard finishes, fixtures, equipment, and appliance for both Inclusionary Units and Market Rate Units” may suggest that downgraded materials for Inclusionary Units are generally permissible.

***Recommendation:*** Add the phrase “in compliance with the development standards set forth in 11 D.C.M.R. §2605” at the end of section 2202.4(n).

- 2. Regarding the prioritization of eligible households, we recommend that consideration be given to better prioritizing current District residents and those who have been waiting the longest for an Inclusionary Unit.

***Recommendation:*** To better prioritize eligible households, DHCD could maintain separate “District Resident” and “District Employee” lists ranked by the length of time each has been on that respective list. In lieu of a lottery, DHCD could simply:

- a. Select the top four remaining households on the “District Resident” list for consideration for the next available Inclusionary Unit;
- b. Make recourse to the “District Employee” list if and when fewer than four (4) households remain on the “District Resident” list; and
- c. Make recourse to the “Miscellaneous” list if and when fewer than four (4) households remain on the “District Employee” list.

***We believe this “first come first serve” approach may better satisfy the purposes of the program as enumerated at section 2600.3 of the zoning regulations.***

***We further recommend that consideration be given to eliminating (1) the “Miscellaneous” or any non-District list, and (2) the owner-established alternative method of house-hold selection for the subsequent lease of a Rental Inclusionary Unit at section 2208.3(c). At best we are uncertain as to the need for and purpose of either provision, and at worst we believe they may well add elements of unfairness to the selection system.***

- 3. We believe that it is imperative to keep the list updated for the sake of administrative efficiency and apprising eligible households as to where they stand at any given point in time.

***Recommendation:*** Consideration should be given as to how best to maintain and update each list, including the elimination of households that are no longer interested in participating in the program, or who have failed to timely renew registration pursuant to section 2209.4. Regarding section 2209.4 and the renewal time period

*itself, two years may be too long given the likelihood of changed circumstances for many families. Thus consideration should be given to requiring households to renew their registration every six (6) or twelve (12) months.*

4. Regarding the tenant's obligation to maintain eligibility for the Inclusionary Unit based upon household size and annual income, we believe such requirements are necessary but should be flexible enough to minimize the chances for unjust or anomalous evictions.

*Recommendation: The IZ program should incorporate the "140 percent" rule which we believe applies in the Low Income Housing Tax Credit program, and protects the continued eligibility of tenants whose incomes rise during the tenancy to as high as 140 percent of the income ceiling. Consideration should be given to affording tenants whose household income rises above that amount a one-time opportunity to explain why such a spike in income is a unique happenstance. Regarding the household size limitation, consideration should be given to an exception for certain life events, such as having a child or getting married, so long as the occupancy requirements at 14 D.C.M.R. §402 are not violated.*

5. The requirement at section 2200.5(b) may be unclear or difficult to follow.

*Recommendation: Rephrase this provision as follows:*

*"(b) The application for a certificate of occupancy shall include a written statement signed by the Mayor indicating that the Inclusionary Development is in compliance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;*

*"(c) The written statement shall be dated no earlier than six (6) months before the date of the application for a certificate of occupancy;*

*"(d) No certificate of occupancy for a Market Rate Unit in an Inclusionary Development shall be issued unless and until the requirements set forth in paragraphs (b) and (c) have been satisfied; and".*

*If this recommendation is adopted, the current paragraph (c) should be renumbered as paragraph (e). Please also note that a semi-colon should be added at the end of paragraph (a) of this subsection. Finally, we recommend that consideration be given to specifying the relevant Mayoral designee or agency in paragraph (b).*

6. Regarding the revocation of building permits and certificates of occupancy in section 2200.5(c), we understand that in practice DCRA's current Zoning Administrator has partially revoked certificates of occupancy with respect to particular units within multi-family dwellings. However, given that agency practices may change over time, we would suggest the following:

***Recommendation: DHCD and DCRA should discuss whether the zoning regulations should be amended to ensure that DCRA's authority to give effect to this provision is clear and unambiguous.***

7. Regarding the list of Inclusionary Units under section 2202.4(p) for which displaced tenants have a right of return to a comparable unit, our concern is that there is no provision for documenting information about the relocation unit or the unit from which the tenant has been displaced.

***Recommendation: A possible remedy is to require that relevant information be added to the list of all Inclusionary Units in the Inclusionary Development at Section 2202.4(e) -- specifically, the units from which tenants are to be displaced should be identified as such, and columns should be added to the relevant table as necessary to identify the relocation unit and household contact information.***

8. Regarding DCRA written notices of any deficiency in the application for Certificate of Inclusionary Zoning Compliance at section 2203.1, our concern is that allowing "a reasonable period of time" to cure the deficiency is too open-ended.

***Recommendation: Deficiencies should be cured by a date certain after which the Inclusionary Development Owner would have to reapply for the Certificate of Inclusionary Zoning Compliance.***

9. Regarding the reporting of any substantive change to relevant information since the filing of the application at section 2205.2:

***Recommendation: We believe this requirement should be set forth as an additional provision within section 2203 regarding DCRA's "Review and Approval of Application for Certificate of Inclusionary Zoning Compliance."***

10. Regarding DCRA's authorization of third parties at section 2205.6 to certify compliance with the Certificate of Inclusionary Zoning Compliance and Inclusionary Zoning program, any such third party ought to be required to be independent of the developer.

***Recommendation: Section 2205.6 should be amended to include the requirement that a third party inspector must be independent of the developer. We would further encourage DHCD and DCRA to discuss District certification of such third parties.***

11. The occupancy maximums for zero and one bedroom units at section 2210.2 appear to be unduly restrictive in light of the minimum unit sizes/floor areas at section 2202.4, as measured against the minimum floor areas / occupancy maximums in the general occupancy requirements at 14 D.C.M.R. §402.

***Recommendation: The maximum occupancy should be two (2) persons for a zero (0) bedroom unit, and three (3) persons for a one (1) bedroom unit.***

Any number of other possible revisions may merit discussion, including the relevance and application of other tenant rights not currently addressed in either the zoning or the administrative regulations. I strongly recommend that DHCD convene a working group of relevant District agencies in the interest of ensuring that any proposed rulemaking captures the significant issues.

Thank you for your efforts to improve the administration and the effectiveness of this important affordable housing program and for considering these recommendations. I would be happy to further discuss any aspect of this matter.

Sincerely,



Johanna Shreve  
Chief Tenant Advocate  
District of Columbia Office of the Tenant Advocate

JS/jc

Cc: John E. Hall, Director, DHCD  
Gilles Stucker, Housing Resource Administrator, DHCD