The Committee of 100 on the Federal City

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TO: Anthony Hood, Chairperson and Members of the D.C. Zoning Commission
FROM: Caroline Petti on behalf of the Committee of 100 on the Federal City
DATE: September 20, 2018

Re: Comments on Z.C. Case No. 04-33I

Thank you for the opportunity to comment on Case No. 04-33I Office of Planning Text Amendment to Subtitle C, Chapter 10, Inclusionary Zoning (IZ) and Corresponding Text Amendments to Subtitles D, E, F, G, H, and K. The following comments are submitted on behalf of the Committee of 100 on the Federal City.

Amendment #8. Subtitle C Sections 1003.1 and 1003.2

On October 9, 2016, the Committee of 100 submitted comments in Case No. 04-33G on OP's proposed IZ Set-Aside Requirements in Section 1003. OP's proposal confined the larger 10% IZ set-aside to stick-built construction located in zones "with a by-right height limit of fifty feet or less." In our comments, the Committee of 100 pointed out that, according to OP, changes in stick-built construction "…is enabling developments in zones that permit heights of 75 feet to use the less expensive stick construction to achieve the full height where previously they would have needed steel and concrete." If this is the case, we argued, there is no rationale for connecting the 10% set-aside for stick-built construction to developments located in fifty feet and below zones and we suggested the following change:

> 1003.1 An inclusionary development which does not employ Type I construction as defined by Chapter 6 of the International Building Code as incorporated into District of Columbia Construction Codes (Title 12 DCMR) to construct a majority of dwelling units ~~and which is located in a zone with a by-right height limit of fifty feet (50 ft.) or less~~ shall set aside the greater of ten percent (10%) of the gross floor area dedicated to residential use…"

During the Commission's discussion of Case No. 04-33G on October 17, 2016, several Commissioners expressed interest in the Committee of 100's comment and asked OP whether it had merit. OP indicated that, while they had modeled several combinations, they had not tested increasing the set-aside requirements for stick-built construction over 50 feet tall from 8% to 10%. In the interest of time and in not delaying final action on Case No. 04-33G, the Commission decided to ask OP to "…look at it and if we have to do another tweak, among many tweaks that we do up here, we can do that later."

On September 20, 2018, the Zoning Commission is considering proposed changes to the IZ Set-Aside Requirements in Section 1003. OP's proposal continues to associate the 10% set-aside for stick-built construction in Section 1003.1 with stick-built construction located in zones with a

by-right height limit of fifty feet or less. OP's Public Hearing Report does not discuss whether any additional analysis was conducted per the Commission dialogue on this subject on October 17, 2016 nor does it discuss whether there's any rationale for confining the 10% IZ set-aside for stick-built construction to stick-built construction in zones with a by-right height limit of fifty feet or less.

At a time when building and preserving affordable housing is of the highest priority for our city, we're hard-pressed to understand why the Office of Planning continues to limit the 10% set-aside for stick-built construction to stick-built construction located in zones with a by-right height limit of fifty feet or less.

The Committee of 100 suggests the following change to OP's proposal:

> 1003.1 An inclusionary development which does not employ Type I construction as defined by Chapter 6 of the International Building Code as incorporated into District of Columbia Construction Codes (Title 12 DCMR) to construct a majority of dwelling units ~~and which is located in a zone with a by-right height limit exclusive of any bonus height of fifty feet (50 ft.) or less~~ shall set aside the greater of ten percent (10%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C Section 1001.2(d), or seventy-five percent (75%) of the bonus density utilized to inclusionary units plus an area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C Section 1001.2(d).

In addition, OP is proposing to add new text to Section 1003.2. The new proposed text associates the set-aside for steel-and-concrete construction with steel-and-concrete construction in zones with a by-right height limit greater than fifty feet.

The Committee of 100 suggests the following change to OP's proposal:

> 1003.2 An inclusionary development which employs Type I construction as defined by Chapter 6 of the International Building Code as incorporated into the District of Columbia Construction Codes (Title 12 DCMR) to construct the majority of dwelling units~~, or which is located in a zone with a by-right height limit exclusive of any bonus height that is greater than fifty feet (50 ft.)~~ shall set aside the greater of eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C Section 1001.2(d), or fifty (50%) of the bonus density utilized to inclusionary units plus an area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C Section 1001.2(d).

We fail to see the purpose is of associating zones or height limits with the IZ set-asides. It seems to simply add unnecessary confusion to how the set-asides are applied. The set-asides themselves (i.e., the 10% and the 8%) already reflect the building cost differences between stick-built and steel-and-concrete construction. The underlying zone of the inclusionary development is irrelevant.

(Note: We refer several times throughout our comments to 10% and 8% set-asides. We do this as a form of shorthand to make our comments less cumbersome to the reader. We recognize we are abbreviating lengthier regulatory text.)

Amendment #1. Subtitle B Section 100.2 Definitions and Amendment #7. Subtitle X General Procedures

OP proposes 1) changes to the definition of "Inclusionary Development" and "Inclusionary Unit", and 2) changes to Section 305.5 of Subtitle X describing "public benefits" of Planned Unit Developments.

There's very little explanation for these proposed changes; however, at setdown, OP described the goal of the changes as follows: "…ensuring affordable units proferred as PUDs are treated automatically as IZ units…".

Developers are increasingly willing to proffer affordable housing, beyond the required IZ minimum, in PUD developments. The Zoning Commission must evaluate whether the features of PUD proffers are "public benefits" that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under matter-of right provisions. This evaluation, of course, applies to any evaluation of proferred affordable housing beyond required IZ.

Issues connected with PUD affordable housing outside of the IZ program arose in connection with the JBG PUD Case No. 15-15 in Eckington. Some of the issues there were unique to that case, but the case surfaced others that may apply more generally. For example:

- The effect of administering affordable housing on a project-by-project basis instead of applying the IZ statute and regulations uniformly.
- Whether approval of non-IZ compliant affordable housing might encourage developers to circumvent mandatory IZ requirements.
- The extent to which the suite of IZ requirements – importantly including IZ implementation requirements – should apply to non-IZ affordable housing proferred as a "public benefit".

The Committee of 100 believes that the changes proposed in Amendment #1 and Amendment #7 could benefit from more thorough review and consideration. If they haven't already, the proposed changes should be reviewed by the Department of Housing and Community Development which administers the IZ program. The Committee of 100 supports efforts to ensure PUDs provide additional affordable housing. At the same time, we want to be sure that proferred "affordable housing" is a real "public benefit" and not just a slogan.