National Capital Planning Commission

Delegated Action of the Executive Director

PROJECT
Text Amendments – Termination of Affordability Controls upon Foreclosures related to Planned Unit Developments and Inclusionary Zoning
Washington, D.C.

REFERRED BY
Zoning Commission of the District of Columbia

NCPC FILE NUMBER
ZC 04-33F

NCPC MAP FILE NUMBER
n/a

DETERMINATION
Approval of report to the Zoning Commission of the District of Columbia

REVIEW AUTHORITY
Advisory
per 40 U.S.C. § 8724(a) and DC Code § 2-1006(a)

The Zoning Commission of the District of Columbia has referred several proposed District of Columbia Zoning Regulations text amendments to NCPC for review and comment. The amendments will automatically terminate affordability controls imposed on a unit by a Planned Unit Development (PUD) order or affected by Inclusionary Zoning (IZ); as long as the agency specified in the affordability covenant recorded against the unit is provided advance notice and records an acknowledgment of receipt of such notice in the District's land records. The specific proposed amendments are shown as follows:

Chapter 24, **PLANNED UNIT DEVELOPMENT PROCEDURES**, § 2409, **IMPLEMENTATION**, is amended by adding new §§ 2409.10 and 2409.11 to read as follows:

2409.10 The Zoning Administrator shall not approve an application for a certificate of occupancy for a PUD if the order approving the PUD includes a condition requiring the provision of affordable housing unless the owner has executed monitoring and enforcement documents with the District of Columbia, which will bind the owner and all successors in title to abide by such terms as the District considers necessary to ensure that the affordable housing will be constructed, marketed, sold, re-sold, rented, and occupied, so as to be affordable to the target households during the specified control period and safeguarded regarding foreclosure.

2409.11 A condition in an order approving or modifying a PUD that requires the provision of affordable housing shall automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary of the U.S. Department of Housing and Urban Development provided the owner has executed monitoring and enforcement documents per the requirements of § 2409.10.

Chapter 26, **INCLUSIONARY ZONING**, is amended as follows:

Section 2602, **APPLICABILITY**, is amended as follows:

By amending § 2602.4 to add a reference to new §§ 2602.10 and, 2603.6, so that the provision will read as follows:

2602.4 Except as provided in §§ 2602.5, 2602.10, 2603.5, 2603.6, and 2607.1(c) or the Act, all inclusionary units created pursuant to this chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists.

By adding a new § 2602.10 to read as follows:

2602.10 The requirements of this chapter shall automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary of the U.S. Department of Housing and Urban Development.

Section 2603, **SET-ASIDE REQUIREMENTS**, is amended by adding a new § 2603.6 to read as follows:

2603.6 Notwithstanding § 2603.5, nothing shall prohibit the Mayor or the District of Columbia Housing Authority to acquire title to inclusionary units in a for-sale inclusionary development if any of the following circumstances exist:

(a) There is a risk that title to the units will be transferred by foreclosure or deed-in-lieu of foreclosure, or that the units' mortgages will be assigned to the Secretary of the U.S. Department of Housing and Urban Development; or

(b) Title to the units have been transferred by foreclosure or deed-in-lieu of foreclosure, or the units' mortgages have been assigned to the Secretary of the U.S. Department of Housing and Urban Development.

The original amendments were intended to remove a legal impediment to the issuance of mortgage insurance by the United States Department of Housing and Urban Development (HUD) to properties with affordability controls. Through comments provided on September 25, 2012, the HUD informed the District that the notice requirement was in conflict with the need for automatic termination of the affordability controls. In response, the District Office of Planning (OP) revised the text to eliminate the notice requirement and added provisions intended to safeguard affordable units regarding foreclosure.

The OP submitted the revised text to the Zoning Commission through its report dated November 9, 2012. At its regular public meeting held November 19, 2012, the Zoning Commission set down the revised text for a public hearing and authorized the immediate publication of this notice. In addition, the Commission adopted the amendments on an emergency basis and authorized the publication of a notice of proposed rulemaking.

Staff has reviewed the proposal and has determined that the proposed amendments would not be inconsistent with the Comprehensive Plan for the National Capital – Federal Elements, nor adversely affect any other federal interests.

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Pursuant to delegations of authority adopted by the Commission on August 6, 1999 and 40 U.S.C. § 8724(a) and DC Code § 2-1006(a), I find that the rulemaking text amendments, which pertain to the termination of affordability controls upon foreclosures located in Planned Unit Developments or affected by Inclusionary Zoning, are not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Marcel Acosta [Date]
Executive Director