

**OFFICE OF 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 (2012 Repl.)) (Inclusionary Zoning Act) and Mayor's Order 2008-59, dated April 2, 2008, hereby gives notice of the adoption of the following amendments to Chapter 22 (Inclusionary Zoning Implementation), of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

These final rules (Final Rulemaking) amend the 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 10 of Subtitle C, Title 11 (Zoning Regulations of 2016), of the District of Columbia Municipal Regulations.

On August 2, 2013, a Notice of Proposed Rulemaking was published in the *D.C. Register* at 60 DCR 11258, and on November 14, 2014 a Notice of Second Proposed Rulemaking was published at 61 DCR 11860. In response to public comments received after the issuance of those notices, and Inclusionary Zoning Program administration and operation, changes were determined necessary or desirable to effectively implement and administer the Inclusionary Zoning Program.

The Zoning Commission Order #04-33G, dated October 17, 2016 and published in the *D.C. Register* on December 16, 2016, made substantial changes to the Inclusionary Zoning Program, and those changes were determined to become effective June 5, 2017. In order to effectively administer those changes, in conjunction with the approximately 500 existing Inclusionary Units, an amendment to the Inclusionary Zoning Act was needed, along with revisions to the Inclusionary Zoning Administrative Regulations. The Inclusionary Zoning Consistency Amendment Act of 2017, effective September 23, 2017 (D.C. Law 22-24; 64 DCR 7647 (August 11, 2017)) implemented the necessary amendments to the Inclusionary Zoning Act. These final rules will implement the necessary amendments to the Inclusionary Zoning Administrative Regulations. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* at 64 DCR 008722 on September 1, 2017. Comments were received and considered.

The following summarizes the major changes proposed in the Notice of Emergency and Proposed Rulemaking, the comments received and the District's response:

1. Consistent with the Zoning Commission order and Inclusionary Zoning Consistency Amendment Act of 2017, the terms "Low-Income Household" and "Moderate-Income Household" have been deleted and replaced with MFI (replacing Area Median Income; see below) Levels, which is a defined term in §2299, to allow further flexibility. No comments were received regarding this change.

2. Changing “Area Median Income” or “AMI” to “Median Family Income” or “MFI” – in order to be more consistent with the Inclusionary Zoning Regulations, the Zoning Commission proposed changes and the Inclusionary Zoning Consistency Amendment Act of 2017, the term “AMI” or “Area Median Income” is replaced with “MFI” or “Median Family Income” throughout the regulations. The term “MFI” is also defined in the definitions section of DCMR (11-B DCMR §100), which is identical to the definition in §2299. No comments were received regarding this change.
3. Income limits on lease renewals – codifying current practice in order to allow more households to remain in their Inclusionary Units, the maximum household income upon renewal may be up to one hundred forty percent (140%) of the higher of the then-current maximum household income or the maximum household income at the time of initial lease execution. This concept is described in §2217.6 - §2217.9, including clarifying options for the household if the income exceeds the one hundred forty percent (140%) limit. This policy is based on the LIHTC program and is already used in other District affordable dwelling unit (ADU) programs. Comments were received in favor of the increased income limits and re-designation of Inclusionary Units and other comments were received and incorporated further clarifying the re-designation process. A comment was received opposing the change as increasing paperwork and disrupting the matching of tenants and units. The District does not believe the change will result in increased paperwork or a disruption in selecting tenants. Households leasing Inclusionary Units are required to be re-certified and sign new leases every year under the existing program. In addition, the District found that a similar policy used by the Low Income Housing Tax Credit program has been successful without excessive paperwork or disrupting the matching of tenants and units. This change will also limit the displacement of households due to increases in annual income. The Final Rulemaking clarifies that the property manager or Inclusionary Development Owner must notify DHCD in writing that a re-designation is necessary as soon as it is determined and identify the unit to be re-designated. The District will monitor the impact of these changes on housing providers, program beneficiaries and the administration of the program.
4. Combining lists of those who live and work in the District – currently, the regulations rank three groups of lottery selectees based on how long they have been on the IZ registration list (those who live in the District, those who are not District residents, but work in the District and those who neither live nor work in the District). As proposed and adopted on an emergency basis, §2211.2 combines those who live in the District and those who are not District residents, but work in the District into one list, to be ranked by how long each household has been on the registration list. This will provide those who work in the District much greater opportunity to buy/rent an Inclusionary Unit. A comment was received opposed to this change citing a need to maintain the existing preference for current District residents given the paucity of affordable housing available to District residents. After careful consideration the District has decided not to include this change in the Final Rulemaking, reverting back to the previous system of giving first priority to those who live in the District and second priority to those who are not District residents, but work in the District. Non-resident District workers are still able to qualify for Inclusionary Units, but they are ranked below current District residents.

5. Mandatory amenity fees included in the definition of “Utilities” – the definition of “Utilities” in §2299 has been amended to include mandatory amenity fees and other mandatory fees, which limits the amount of rent to be charged, so that households are not paying more than the maximum allowed percentage of their annual income on housing costs. The determination was made that because the fees are mandatory, they should be included in the housing costs like utility fees. Comments were received in favor of including mandatory fees in the definition of utilities and one comment suggested further clarifying the mandatory fees. In the Final Rulemaking, this was done in §2207.4 and additional clarification was made to the definition of “utilities.”
6. Housing Cost limitations – Currently households seeking to rent or purchase IZ Units must certify that they will not spend more than thirty-eight percent (38%) (for rented IZ Units) or forty-one percent (41%) (for purchased IZ Units) of their annual income on housing costs. §2214.3 has been revised to require that Households confirm that they have been advised that this is a recommendation, but households must certify that they will spend no more than fifty percent (50%). This change was proposed because so many households are currently paying much more of their income for housings costs and may find themselves in this situation due to temporary fluctuations in income.

A comment was received in favor of increasing the percentage of income allowed to be spent on housing costs to fifty percent (50%) and two comments were received objecting to this change.

The proposed change reflects some important findings by DHCD.

The first is that many households on DHCD’s registration list currently pay significantly more than 50% of their income for lower quality housing. Allowing these households to make the choice to improve their housing quality and potentially reduce their cost burden seemed appropriate and increases Households’ affordable housing options. Households have the choice to sign up for the lottery for specific units and they are not required to sign a lease or purchase contract for the IZ units they are offered if they consider it to be unaffordable.

Second, the IZ program, similar to the Low Income Housing Tax Credit or the Housing Production Trust Fund programs sets rents based on threshold incomes (*i.e.*, 80% and 60% of MFI) and not individual applicants’ incomes, as would be the case with programs such as Housing Choice Vouchers and Public Housing. The original narrower minimum to maximum income band assures greater affordability by selecting higher income households from the lottery and reducing the types of households DHCD forwarded to housing providers for consideration. The District is interested in having the IZ program provide opportunity to a wide range of households across the city.

Third, and perhaps most critically, housing providers and lenders implementing threshold rent programs such as IZ have their own procedures in place to assure the unit is affordable to selected households within the requirements of the program and other applicable laws. To the extent the minimum income thresholds in the current regulation came into play in qualifying a household selected in the lottery, the limits often seemed somewhat arbitrary in the context of the housing providers’ and lenders’ already rigorous determination of ability to

pay. DHCD was often requested to consider cases where households' incomes were certified as close to but not over the minimum income threshold.

After careful consideration, the District has elected to adopt the proposed revision thereby leaving the maximum percentage of annual income that a Household certifies it will spend on Housing Costs at fifty percent (50%) as originally proposed. DHCD will monitor how this change affects program outcomes.

7. Affirmative Fair Housing Marketing Plans (AFHMPs) – Previously, DHCD required all Inclusionary Development Owners to submit AFHMPs and required review and approval by DHCD's Inclusionary Development Program representatives and DHCD's Fair Housing Program Coordinator prior to DHCD conducting a lottery. §2200.7 has been added to require affirmative marketing language to be included in all marketing material. Pursuant to the regulations, DHCD will require AFHMPs when the Inclusionary Development Owner elects to conduct its own lottery or wait-list. No comments were received regarding this change.
8. Clarifying "Certifying Entities" to conduct income certifications – §2215 clarifies that a "Certifying Entity" can include DHCD, a community based organization or a management/leasing team authorized by DHCD. DHCD plans to clarify requirements for certification and formally approve Certifying Entities going forward. Requirements will include at least 1 person being a Certified Occupancy Specialist (or having other DHCD-approved certification), all staff involved in income certifications to have attended DHCD's Inclusionary Zoning/ADU 101 course, notification of staff changes annually and renewal of certification every two (2) years. This merely clarifies the existing practice. A comment was received objecting to the approval of management/leasing teams. The District sees certification as an important quality assurance practice. While the certification process was clarified, this provision remains unchanged in the Final Rulemaking.
9. Certificate of Inclusionary Zoning Compliance (CIZC) application fee – §2202.2 has been revised, proposing DHCD to publish the CIZC application fee in the *D.C. Register*, rather than specifying the amount, which is currently two hundred fifty dollars (\$250) and has not been amended since the regulations were initially adopted. This will allow for easier amendment of the amount in the future. No comments were received regarding this change.
10. Inclusionary Development Covenants required to be recorded prior to CIZC approval – §2204.2 was added to clarify that DHCD will provide a draft Inclusionary Development Covenant to Inclusionary Development Owners upon receipt of the CIZC and requiring the Inclusionary Development Owner to complete, sign and return it to DHCD prior to DCRA approving the CIZC. No comments were received regarding this change.
11. Clarifying timing for price notification and listing on housing locator website – §2207.1 and §2207.6 clarify that within seven (7) days after receipt of a Notice of Availability, DHCD shall notify the Owner of the maximum sales price or rent. Within seven (7) days after receiving the maximum sales price or rent, the Inclusionary Development Owner must list the available Inclusionary Units on the housing locator website. DCHD will not conduct a lottery for a particular Inclusionary Unit until it is listed on the housing locator website. All

comments received related to this change were in favor of the shortened time frames and no additional changes were made.

12. Clarifying method of household selection – §2208 was clarified to emphasize that DHCD-run lotteries are the primary method to select households, but subject to certain restrictions, other methods are allowed. Comments were received in favor of the changes, including proposing further loosening of the restrictions on the re-sale of Inclusionary Units. The District will implement the proposed changes and evaluate whether additional changes are needed in the future.
13. Clarifying household registration process – §2209 was clarified to require households to attend an Inclusionary Zoning orientation before registering for the lottery, and households interested in purchasing an Inclusionary Unit should attend the homeownership training program shortly after registering for the lottery. It was further clarified that in addition to the registration, the certificates for attending the orientation and homeownership training each expire after two (2) years and each need to be renewed. Comments were received in favor of the 2 year validity period for registrations and suggesting improvements to the process for households to register for the purchase of Inclusionary Units and attend the homeownership training. In response, the District has modified §2209.2 and has added §§2209.8 and 2209.9 to clarify this process. Additional improvements will be made in the administration of the program to provide notice to registrants before removing their names from the registration list.
14. Clarifying lottery process – §2210 was added to conform the regulations to DHCD’s current practice of asking households to confirm interest in the Inclusionary Units prior to a lottery, so that only interested households are included in the lottery and therefore strengthen the pool of households chosen in the lottery. No comments were received regarding this change.
15. Shortening time frames after lotteries – §2212 was clarified to shorten the time period from seventeen (17) days to ten (10) days for a household to confirm interest in an Inclusionary Unit after being selected in a lottery, and to shorten the time period from forty-five (45) days to thirty (30) days for a household to provide documentation to the sales/leasing team after being selected in a lottery. A number of comments were received in favor of the proposed shortened time frames. A comment in support also questioned whether the shortened period was sufficiently short, suggesting fourteen (14) days for a household to provide documentation after being selected. No additional changes were made to the Final Rulemaking but the District has taken these comments under advisement and DHCD will continue to monitor the program to see if further changes are required.
16. Clarifying marketing timeframes and requirements after lotteries – §2213 was clarified to better explain that the #1 ranked household selected in a lottery has a thirty (30) day exclusivity period to provide documentation to the sales/leasing team and what the sales/leasing team may do during that period. The thirty (30) day period was shortened from forty-five (45) days and §2213.3 was added to allow the #1 ranked household to waive that exclusivity period, allowing the sales/leasing team to move on to the next household sooner. Comments were received in favor of the waiver of exclusivity and suggesting that the word ‘may’ be changed to ‘shall’ in §§2213.3 and 2213.4 where a household is waiving the

exclusivity period and also clarifying that a household need not use the DHCD-provided form to do so. A comment was also received questioning why the requirement for the Inclusionary Development Owner to provide a copy of the Inclusionary Development Covenant was removed, but it was only moved and is currently in §2216.4.

17. Eliminating maximum number of people in a household – §2214.4 was modified (and moved from §2210.2) to eliminate the maximum number of people in a household because DCRA already enforces the building code to prevent over-crowding and the DCRA maximums conflicted with the Inclusionary Zoning maximums. This will eliminate possible conflicts between the Inclusionary Zoning maximum and building code maximums. A comment was received supporting the new household size eligibilities. This change remains in the Final Rulemaking.
18. Other changes were made to clarify and simplify and make technical changes to the regulations. Additional comments were received in favor of other simplifications and clarifications. Other comments were received unrelated to the proposed changes and are not incorporated here but will be considered along with the others discussed above for future amendments.

Chapter 22, INCLUSIONARY ZONING IMPLEMENTATION, of Title 14 DCMR, HOUSING, is amended to read as follows:

CHAPTER 22 INCLUSIONARY ZONING IMPLEMENTATION

Secs.	
2200	General Provisions
2201	Prerequisite for Obtaining Building Permit 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
2207	Designation of Maximum Purchase Price or Rent and Housing Locator Website Registration
2208	Method of Selection of Households
2209	Household Registration
2210	Inclusionary Unit Initial Notification
2211	Household Selection Through District Lottery
2212	District Lottery – Notification to Households and Owners
2213	District Lottery – Marketing of Inclusionary Units to Households Selected Pursuant to the Lottery
2214	Verification of Household Eligibility; Required Certifications
2215	Certifying Entity
2216	Closing and Lease Signing Procedures

2217	Responsibilities of Rental Inclusionary Development Owners and Tenants
2218	Responsibilities of Inclusionary Unit Owners
2219	Determination of Maximum Resale Price
2220	Rental of a For Sale Inclusionary Unit
2221	Conversion of a Rental Inclusionary Development to a For Sale Inclusionary Development
2222	Sale by Heirs
2223	Foreclosure
2224	Violations and Opportunity to Cure
2225	Waiver
2299	Definitions

2200 GENERAL PROVISIONS

- 2200.1 The purpose of this chapter is to implement the Zoning Commission’s Inclusionary Zoning Regulations (11-C DCMR Chapter 10) and the Inclusionary Zoning Act.
- 2200.2 This chapter implements these aspects of the Inclusionary Zoning Regulations and 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 Eligible Households for an Inclusionary Unit; and
 - (c) The responsibilities of and limitations on Inclusionary Development Owners, Inclusionary Unit Owners and Inclusionary Unit Tenants.
- 2200.3 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.
- 2200.4 In computing a period of time specified in this chapter, calendar days shall be counted unless otherwise provided.
- 2200.5 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 not a Saturday, Sunday, or official District of Columbia holiday.

2200.6 DHCD will provide all notices related to Household registration and lotteries to Households via email only, unless a Household has previously requested notice to be sent by first class mail.

2200.7 All marketing and advertising of Inclusionary Developments shall contain the following statement “Pursuant to the District of Columbia Inclusionary Zoning program, income restricted units are available at this development. Please contact the Department of Housing and Community Development at www.dhcd.dc.gov regarding the availability of such units and requirements for registration in the Inclusionary Zoning program.”

2201 PREREQUISITE FOR OBTAINING BUILDING PERMIT FOR AN INCLUSIONARY DEVELOPMENT

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

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 DCRA no later than the date upon which the first application for an above-grade 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 an application fee in an amount as indicated by publication in the *D.C. Register*.

2202.3 The Inclusionary Development Owner shall file its application for a Certificate of Inclusionary Zoning Compliance on a form prescribed by DCRA 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 or condominium name, if applicable;
- (b) The street address of the Inclusionary Development;
- (c) The zone 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, floor location, 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 the size indicated in the following table, whichever is lesser;

Type of Dwelling	Type of Unit	Minimum Unit Size (net square feet)
Multiple Family Dwelling	Studio	400
	One bedroom	550
	Two bedrooms	850
	Three bedrooms	1,000
	Four or more bedrooms	1,050
One or Two Household Dwelling	Two bedrooms	1,000
	Three bedrooms	1,200
	Four or more bedrooms	1,400

- (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 DCRA pursuant to 12-A DCMR §106.1.12;
- (i) A plan for the phasing of construction that demonstrates compliance with

11-C DCMR §1005.4, 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;

- (j) The total land area of all of the lots included in the Inclusionary Development;
- (k) The total gross floor area of the Inclusionary Development; the gross residential floor area of the Inclusionary Development; the net residential floor area of the Inclusionary Development ; and the gross floor area of the Inclusionary Development required to be set aside pursuant to 11-C DCMR §1003;
- (l) The total net square footage that will be set aside for Inclusionary Units as calculated by multiplying the gross floor area of the Inclusionary Development required to be set aside pursuant to 11-C DCMR §1003 by the ratio of the net residential floor area of the Inclusionary Development to the gross residential floor area of the Inclusionary Development ;
- (m) The net square footage of Inclusionary Units that will be set aside for each MFI Level;
- (n) A proposed schedule of standard finishes, fixtures, equipment, and appliances for both Inclusionary Units and Market Rate Units;
- (o) For each Inclusionary Unit, the approximate date by which the Inclusionary Development Owner will provide a Notice of Availability pursuant to §2206;
- (p) 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 the basis of the right to return; and
- (q) Such other information as may be requested by DCRA.

2203

REVIEW AND APPROVAL OF APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

2203.1

If DCRA 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, DCRA 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, DCRA may deny the application for the Certificate of Inclusionary Zoning Compliance.

2203.3 If the application for a Certificate of Inclusionary Zoning Compliance demonstrates compliance with the Inclusionary Zoning Program, DCRA shall review and execute the Certificate of Inclusionary Zoning Compliance prior to issuance of the building permit.

2204 INCLUSIONARY DEVELOPMENT COVENANT

2204.1 The Inclusionary Development Covenant shall be in a form found legally sufficient by the Office of the General Counsel of DHCD and 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 DHCD 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 MFI 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 MFI 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;
- (d) A provision providing for the whole or partial release or extinguishment of the Inclusionary Development Covenant only upon the reasonable approval of the Director of DHCD if required by law or pursuant to the provision described in §2204.1(g);
- (e) A provision requiring that the sale or resale of a For Sale Inclusionary Unit shall be only to an Eligible Household selected by DHCD or otherwise authorized by this chapter, at a price that does not exceed the

Maximum Resale Price established in accordance with §2219;

- (f) A provision requiring that a lease rider, pursuant to §2216.5, shall be attached as an exhibit to the lease for a Rental Inclusionary Unit and shall be executed by the Inclusionary Development Owner and each Inclusionary Unit Tenant, including any occupant of a Rental Inclusionary Unit that is eighteen (18) years old or older; and
- (g) To the extent allowed by law, a provision requiring that in the event title to a For Sale Inclusionary Unit is transferred according to the provisions of §2223.1, the proceeds from such foreclosure or transfer shall be apportioned and paid as described therein.

2204.2 DHCD shall provide a draft or template Inclusionary Development Covenant to an Inclusionary Development Owner, who shall complete it and return an executed copy to DHCD prior to approval of the Certificate of Inclusionary Zoning Compliance by DCRA. Upon receipt of the Inclusionary Development Covenant by DHCD, signed by the Inclusionary Development Owner and otherwise conforming to the requirements of this §2204, and upon receipt by DCHD of the fully executed Certificate of Inclusionary Zoning Compliance, DHCD shall have the Inclusionary Development Covenant fully executed and recorded with the District of Columbia Recorder of Deeds.

2204.3 DHCD may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner or Inclusionary Unit Owner with the Inclusionary Development Covenant.

2205 CERTIFICATES OF OCCUPANCY FOR INCLUSIONARY UNITS

2205.1 An Inclusionary Development Owner shall apply for and obtain a Certificate of Occupancy for each property that contains Inclusionary Units that identifies and includes each Inclusionary Unit in the Inclusionary Development. For an Inclusionary Development where no Certificate of Occupancy is required, the submission requirements of this §2205 must be satisfied prior to the DCRA inspection of the As-Built Foundation Survey (“Wall Check”) required by 12-A DCMR §109.3.1.2.

2205.2 Prior to the issuance of a Certificate of Occupancy for an Inclusionary Development, or DCRA acceptance of a Wall Check, an Inclusionary Development Owner shall provide to DCRA a copy of the recorded Inclusionary Development Covenant along with 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. DCRA 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 or request for a final building inspection for an Inclusionary Development where no Certificate of Occupancy is required, DCRA shall inspect the Inclusionary Development for compliance with the Certificate of Inclusionary Zoning Compliance.
- 2205.4 DCRA shall make good faith efforts to complete its Inclusionary Zoning compliance inspection within fifteen (15) business days after receipt of the Certificate of Occupancy application or request for final building inspection for an Inclusionary Development where no Certificate of Occupancy is required.
- 2205.5 No Certificate of Occupancy for an Inclusionary Development shall be issued, or Wall Check accepted or final building inspection approved for an Inclusionary Development where no Certificate of Occupancy is required, as necessary, unless DCRA determines that the Inclusionary Development Covenant is recorded with the District of Columbia Recorder of Deeds and the Inclusionary Development is in compliance with the Certificate of Inclusionary Zoning Compliance.

2206 NOTICE OF AVAILABILITY

- 2206.1 The provisions of this §2206 govern the process by which:
- (a) The Owner fulfills its obligation to notify DHCD that a For Sale Inclusionary Unit is available for purchase; and
 - (b) The owner of a Rental Inclusionary Development fulfills its obligation to notify DHCD that a Rental Inclusionary Unit is available for lease.
- 2206.2 An Owner shall provide the notification described in §2206.1 to DHCD by filing a written Notice of Availability in accordance with the provisions of this §2206.
- 2206.3 An Inclusionary Development Owner shall file the initial Notice of Availability for an Inclusionary Unit prior to the date of submission of the Certificate of Occupancy application to DCRA applicable to such Inclusionary Unit.
- 2206.4 An Owner shall file all subsequent Notices of Availability prior to marketing the Inclusionary Unit for sale or rent.
- 2206.5 A single Notice of Availability may be filed for one or more Inclusionary Units at a time.
- 2206.6 The Notice of Availability shall include:
- (a) The street address and unit number for the Inclusionary Unit(s);

- (b) The estimated date upon which the Inclusionary Unit(s) will be available for occupancy;
- (c) For each Notice of Availability, 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 and when it will be charged; and
 - (3) For the initial sale of a For Sale Inclusionary Unit, 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;
- (d) Whether the Inclusionary Unit is for sale or rent;
- (e) 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 DHCD to consider when establishing the Maximum Resale Price pursuant to §2219.2. The Inclusionary Unit Owner shall document each cost or value claimed with receipts, contracts, or other supporting evidence, as reasonably requested by DHCD;
- (f) A statement as to the Owner's chosen method of selection of Households for the Inclusionary Units in accordance with §2208; and
- (g) Such other information as may be required by DHCD.

2207 DESIGNATION OF MAXIMUM PURCHASE PRICE OR RENT AND HOUSING LOCATOR WEBSITE REGISTRATION

2207.1 Within seven (7) days after the receipt of a Notice of Availability, DHCD 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 set forth in the Rent and Price Schedule in place on the date the original Certificate of Inclusionary Zoning Compliance is approved by DCRA for the Inclusionary Development in which the Inclusionary Unit is located; or
- (b) The purchase price or rent set forth in the Rent and Price Schedule in place on the date the Notice of Availability is received by DHCD for the Inclusionary Unit.

2207.3 The maximum purchase price for all subsequent sales of an Inclusionary Unit shall be the Maximum Resale Price determined by DHCD pursuant to §2219.

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 each such lease is executed, whether a renewing tenant or a new tenant. The maximum rent reflected in the Rent and Price Schedule is inclusive of Utilities.

2207.5 If the costs provided for an Inclusionary Unit described in §2206.6(c) exceed by ten percent (10%) or more the cost assumptions in the applicable Rent and Price Schedule, DHCD may lower the maximum rent or 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.

2207.6 Within seven (7) days after receipt from DHCD of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability, the Owner shall register the Inclusionary Unit for which the Notice of Availability was filed with the Housing Locator Website and notify DHCD in writing of such registration. DHCD shall not conduct a lottery for an Inclusionary Unit prior to receipt of such notification.

2208 METHOD OF SELECTION OF HOUSEHOLDS

2208.1 Households may be selected for an Inclusionary Unit as follows:

- (a) Except as provided in §§2208.2 through 2208.3, a Household may be selected for the initial or subsequent sale and lease of an Inclusionary Unit through a lottery conducted pursuant to §2211;
- (b) Subject to §2211.4, the Owner may select a Household through a method established by the Owner in a marketing plan approved by DHCD; or
- (c) Subject to §2211, an Inclusionary Unit Owner may sell a For Sale Inclusionary Unit to a Household registered pursuant to §2209, or with approval from DHCD to any Household certified by DHCD or its designee as meeting the relevant MFI Level, with or without a District licensed real estate broker or salesperson.

- 2208.2 No lottery shall be conducted for the initial or subsequent sale or lease of an Inclusionary Unit if the Inclusionary Unit is to be:
- (a) Leased or sold to a household displaced from the Inclusionary Unit or the property before conversion to or building of the Inclusionary Development 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 by an Inclusionary Unit Owner to the Inclusionary Unit Owner's spouse, domestic partner, Parent, trust for the benefit of a child, child who is subject to a guardianship, 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 §2212.3(b).

2208.3 If an Inclusionary Unit is subject to a requirement imposed by law or zoning that a specific group, class or type of Household occupy the Inclusionary Unit, or if the Inclusionary Unit meets the accessibility guidelines under the Fair Housing Act (42 USC §3601), the Household shall be selected for the initial or subsequent sale or lease through a method established by the Owner in a marketing plan that is approved by DHCD.

2209 HOUSEHOLD REGISTRATION

2209.1 In order to be eligible to participate in the household selection process, a member of the Household shall:

- (a) Complete an Inclusionary Zoning Program orientation class conducted by DHCD or its designee; and
- (b) Complete a registration application form with such information as DHCD deems necessary including, but not limited to, the Household size, income/MFI Level, and preference, if any, to rent or purchase.

2209.2 All Households shall initially be registered as being eligible to only rent Inclusionary Units. Households wishing to purchase an Inclusionary Unit shall complete a homeownership training program conducted by DHCD or its designee and once evidence of completion is provided to DHCD, the Household may choose to register to purchase only or to rent or purchase.

2209.3 The Inclusionary Zoning Program orientation class and homeownership training program shall each be valid for two (2) years and Households shall re-take each as needed in accordance with this §2209 in order to remain in the Household selection process.

- 2209.4 Registration shall become effective on the date that DHCD:
- (a) Determines that the registration has been completed in compliance with this §2209; and
 - (b) Sends confirmation of such registration.
- 2209.5 Registration shall expire two (2) years after the registration confirmation date referred to in §2209.4, unless renewed prior to expiration, by re-taking the orientation class and notifying DHCD of the Household's intent to renew as required.
- 2209.6 A Full-Time Student shall not be eligible for the registration list unless they are Dependents of Parents or Guardians whose Household would otherwise meet the requirements for the Inclusionary Zoning Program.
- 2209.7 An application to renew a registration shall indicate any change in any information reported in the initial application and Households shall notify DHCD of changes to Household size and income as they occur.
- 2209.8 Each Household shall have only one (1) active registration. If a Household maintains multiple concurrent registrations, all registrations for the individuals in the Household may be nullified.
- 2209.9 A Household shall not assign or transfer its registration. The member of the Household completing the registration must be named in any Inclusionary Unit deed or lease.

2210 INCLUSIONARY UNIT INITIAL NOTIFICATION

- 2210.1 If the Notice of Availability identifies a DHCD lottery as the chosen selection method or if the Notice of Availability identifies a marketing plan as the chosen selection method, but as of the date of the Notice of Availability no such marketing plan has been approved by DHCD, then the provisions of this §2210 shall apply.
- 2210.2 Within seven (7) days after receipt of confirmation from the Owner of registration with the Housing Locator Website and verification by DHCD that the registration is done satisfactorily, DHCD shall notify registered Households meeting the Household size and Annual Income requirements of the availability of the Inclusionary Unit(s).
- 2210.3 To be considered in the household selection process for the Inclusionary Unit(s), Households with active registrations under §2209 who receive the notification referred to in §2210.2 shall confirm interest in the available Inclusionary Unit(s)

by providing DHCD within seven (7) days after the notification, or such period as identified in the notification, a notice of the Household's interest to rent or purchase the Inclusionary Unit(s) for which the Notice of Availability was filed, in such form as may be approved by DHCD.

2210.4 DHCD will place all Households meeting the income and Household size requirements and having complied with the requirements of §2210.3 on one (1) of two (2) lists:

- (a) The District List, consisting of Households with at least one (1) household member who Lives in the District of Columbia or 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.

2211 HOUSEHOLD SELECTION THROUGH DISTRICT LOTTERY

2211.1 No later than fourteen (14) days after DHCD provides the notification referred to in §2210.2, DHCD shall hold a lottery of those Households fulfilling Household size and Annual Income requirements that indicated interest in the available Inclusionary Unit(s) by providing the required documents or information pursuant to §2210.3.

2211.2 For each available Inclusionary Unit, DHCD shall randomly select at least four (4) Households and in most cases ten (10) Households through a lottery from the District List. The Households selected shall then be ranked in the following order:

- (a) Households residing in the District, who shall then be ranked by the length of time each has been on the District List;
- (b) Households not residing in the District with at least one (1) member employed in the District, who shall then be ranked by the length of time each has been on the District List;
- (c) If fewer than four (4) Households on the District List meet the Household size and Annual Income standards applicable to the Inclusionary Unit, DHCD shall randomly select additional Households through a lottery from the Miscellaneous List in order to select at least four (4) Households and in most cases ten (10) Households that meet the Household size and Annual Income standards applicable for the Inclusionary Unit. The Households selected shall then be ranked by the length of time each has been on the Miscellaneous List; and
- (d) If fewer than four (4) Households that meet the Household size and Annual Income standards are available on both the District List and the Miscellaneous List, all Households that meet the Household size and

Annual Income standards and are interested in the Inclusionary Unit will be given an opportunity to purchase or lease the Inclusionary Unit. The Households selected shall then be ranked by the length of time each has been on the registration list.

2211.3 If none of the Households selected through a lottery purchase or lease the Inclusionary Unit, DHCD shall continue to hold lotteries pursuant to the procedures set forth in §2210 and this §2211 until a Household purchases or leases the Inclusionary Unit or the Inclusionary Unit is leased or sold unless the Owner proceeds with a rental or sale of the Inclusionary Unit under §2211.4.

2211.4 DHCD may permit, in its sole and absolute discretion, the rental or sale of the Inclusionary Unit to a Household that is not registered under §2209 but has been determined eligible under §2214, provided that the Owner's marketing plan has been approved by DHCD and:

- (a) More than three (3) months have passed since the Notice of Availability was submitted for the Inclusionary Unit and at least one (1) lottery has been conducted pursuant to this §2211; and
- (b) No Household selected through a previous lottery is still within the qualification process for an Inclusionary Unit to be included in such marketing plan.

2211.5 With respect to each Household selected pursuant to a lottery under this §2211, DHCD shall provide a notice under §2212.2.

2212 DISTRICT LOTTERY – NOTIFICATION TO HOUSEHOLDS AND OWNERS

2212.1 No later than seven (7) days after a lottery is held, DHCD shall provide to the Owner a written list of the Households selected pursuant to the lottery.

2212.2 No later than seven (7) days after a lottery is held, DHCD shall provide a written notice to each of the Households selected in the lottery of their selection and shall provide to each Household 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 information required by §2212.3 or §2212.4.

2212.3 The notice provided pursuant to §2212.2 for a For Sale Inclusionary Unit shall inform each Household that the Household shall provide the following, as applicable, to the Owner:

- (a) Within ten (10) days after the date of the notice, a Household Interest Confirmation Form, as provided by DHCD;

- (b) Within thirty (30) days after the date of the notice:
 - (1) A certificate of completion for the Inclusionary Zoning Program orientation class, or other acceptable confirmation of completion;
 - (2) A Declaration of Eligibility, as described in §2214.2;
 - (3) A Certification of Income, Affordability, and Housing Size, as described in §2214.3;
 - (4) A certificate of completion for the homeownership training program, or other acceptable confirmation of completion;
 - (5) A mortgage pre-approval letter, dated within the last six (6) months from a lender for the Inclusionary Unit for which the Household was selected;
 - (6) Any other documents requested by DHCD; and
- (c) Within sixty (60) days after the date of the notice, an executed sales contract for the For Sale Inclusionary Unit and any other documents requested by DHCD.

2212.4

The notice provided pursuant to §2212.2 for a Rental Inclusionary Unit shall inform each Household that the Household shall provide the following, as applicable, to the Owner:

- (a) Within ten (10) days after the date of the notice, a Household Interest Confirmation Form, as provided by DHCD;
- (b) Within thirty (30) days after the date of the notice:
 - (1) A certificate of completion for the Inclusionary Zoning Program orientation class, or other acceptable confirmation of completion;
 - (2) A Declaration of Eligibility, as described in §2214.2;
 - (3) A Certification of Income, Affordability, and Housing Size, as described in §2214.3;
 - (4) Any other documents requested by DHCD; and
- (c) Within sixty (60) days after the date of the notice, an executed lease for the Rental Inclusionary Unit and

(d) Any other documents requested by DHCD.

2212.5 A Household failing to meet a deadline set forth in §2212.3 or §2212.4 shall be immediately ineligible to purchase or rent the Inclusionary Unit(s) for which they have been selected, unless the Owner extends the deadline in writing.

2213 DISTRICT LOTTERY — MARKETING OF INCLUSIONARY UNITS TO HOUSEHOLDS SELECTED PURSUANT TO THE LOTTERY

2213.1 The Owner shall market an Inclusionary Unit to each of the Households selected under §2212.1, including, but not limited to, showings and providing other marketing information.

2213.2 The highest ranked Household to confirm interest pursuant to §2212.3(a) or §2212.4(a) shall have an exclusivity period of thirty (30) days after the date of the notice provided pursuant to §2212.2 to lease or purchase the Inclusionary Unit. During this exclusivity period, the Owner may market the Inclusionary Unit to the other Households selected in the lottery, and those other Households may submit the documents required by §2212, but only the highest ranked Household to confirm interest as described above may lease or purchase the Inclusionary Unit, subject to §2213.3.

2213.3 If the highest ranked Household that has confirmed interest in the Inclusionary Unit pursuant to §2212.3(a) or §2212.4(a) declines to lease or purchase the Inclusionary Unit prior to expiration of the exclusivity period described in §2213.2, the Household shall provide written notice to the Owner, on a form prescribed by DHCD or otherwise as approved by the Owner and DHCD. Such notice shall terminate the exclusivity period, whereupon other Households selected pursuant to §2212.1 that have confirmed their interest pursuant to §2212.3(a) or §2212.4(a) shall be given the opportunity to lease or purchase the Inclusionary Unit, subject to §2213.4.

2213.4 Upon receipt of the written notice referred to in §2213.3 or upon expiration of the exclusivity period referred to in §2213.2, if the highest ranked Household that has confirmed interest in the Inclusionary Unit pursuant to §2212.3(a) or §2212.4(a) does not lease or purchase the Inclusionary Unit, the Households selected pursuant to §2212.1 that have confirmed interest in the Inclusionary Unit pursuant to §2212.3(a) or §2212.4(a), have submitted the documents and information required by §2212.3(b) or §2212.4(b) and also meet the Owner's non-income based rental or sale criteria shall be given the opportunity to lease or purchase the Inclusionary Unit, subject to §2213.5.

2213.5 If the highest ranked Household that has confirmed interest in the Inclusionary Unit does not lease or purchase the Inclusionary Unit, the Households that submitted the documents and information required by §§2212.3(a) and (b) or §2212.4(a) and (b) within the thirty (30) day exclusivity period shall be given the

opportunity to lease or purchase the Inclusionary Unit, based on their ranking in the lottery selection. No such Household will be given an exclusivity period.

2213.6 If more than one (1) Household has submitted the documents and information required by §2212.3(b) or §2212.4(b) on the same day, but after the thirty (30) day exclusivity period, then the Household which has been on the registration list the longest will have priority to lease or purchase the Inclusionary Unit.

2214 VERIFICATION OF HOUSEHOLD ELIGIBILITY; REQUIRED CERTIFICATIONS

2214.1 Except as set forth in §2208.2(a), an Owner shall sell or rent an Inclusionary Unit only to a Household which:

- (a) Has been certified as an Eligible Household by a Certifying Entity, as evidenced by a Certification of Income, Affordability, and Housing Size, that complies with the requirements of this §2214, and
- (b) Has executed and provided a Declaration of Eligibility that complies with the requirements of this §2214.

2214.2 A Declaration of Eligibility required by this section shall be made on a form prescribed by DHCD and shall include a notarized statement sworn under penalty of perjury by all members of the Household who are at least eighteen (18) years of age that:

- (a) The Certification of Income, Affordability, and Housing Size provided to the Owner was obtained from a Certifying Entity;
- (b) The Household provided accurate and complete information to the Certifying Entity;
- (c) Each member of the Household will occupy the Inclusionary Unit as his or her principal residence;
- (d) No member of the Household has an ownership interest in any other housing or the member will divest such interest before closing on the purchase of, or signing the lease for, the Inclusionary Unit and present evidence to DHCD confirming divestment;
- (e) If a For Sale Inclusionary Unit, at least one (1) member of the Household who is at least eighteen (18) years of age satisfactorily completed an Inclusionary Zoning Program homeownership training program approved by DHCD and evidence of such satisfactory completion is attached to the Declaration of Eligibility;

- (f) At least one (1) member of the Household who is at least eighteen (18) years of age satisfactorily completed an Inclusionary Zoning Program orientation class approved by DHCD and evidence of such satisfactory completion is attached to the Declaration of Eligibility;
- (g) The Household has received a copy of the Inclusionary Development Covenant and understands its rights and obligations thereunder;
- (h) If a Rental Inclusionary Unit, the Household has received a copy of the lease rider and understands its rights and obligations thereunder; and
- (i) Any other representations required by DHCD as part of the form.

2214.3 A Certification of Income, Affordability, and Housing Size required by this §2214 shall be made on a form prescribed by DHCD and signed by an authorized representative of a Certifying Entity, certifying:

- (a) The Household's Annual Income;
- (b) The Household's Annual Income as a percentage of MFI;
- (c) The Household's size;
- (d) That the Household's size meets the size requirements applicable to the Inclusionary Unit under §2214.4 upon initial occupancy only;
- (e) For a For Sale Inclusionary Unit, that the Household has been advised of the recommendation from DHCD that it should not expend more than forty-one percent (41%) and confirms that it will not expend more than fifty percent (50%) of its Annual Income on mortgage payments, Insurance, real property taxes, Utilities and condominium and homeowner association fees for the applicable Inclusionary Unit;
- (f) For a Rental Inclusionary Unit, that the Household has been advised of the recommendation from DHCD that it should not expend more than thirty-eight percent (38%) and confirms that it will not expend more than fifty percent (50%) of its Annual Income on rent and Utilities; and
- (g) Any other information or certifications required by DHCD.

2214.4 Unit size eligibility shall be determined based upon the following standards, regardless of the number of bathrooms or the existence of dens or other rooms that are not Bedrooms:

Unit Size (Bedroom)	Minimum Number of Persons in Unit
Studio (0)	1
1	1
2	2
3	3
4	4
5	5
6	5

2214.5 A Certifying Entity shall finalize its review of the information in §2214.3 and notify the Household within ten (10) days after receipt of all required information and documentation.

2215 CERTIFYING ENTITY

2215.1 A Household shall obtain, and an Owner shall accept, a Certification of Income, Affordability, and Housing Size only from a Certifying Entity.

2215.2 DHCD may approve a Certifying Entity pursuant to a request for proposals process or through an application process.

2215.3 DHCD shall approve a Certifying Entity based on the entity’s experience in successfully implementing activities similar to those described in §2215.4, the capacity and experience of the entity’s staff and management, and any other factors DHCD deems relevant.

2215.4 A Certifying Entity shall be responsible for:

- (a) Verifying a Household’s Annual Income;
- (b) Verifying a Household’s size;
- (c) Verifying that the rent or purchase price of an Inclusionary Unit is affordable to the Household, as indicated in §2214.3(e) or (f);
- (d) Reporting data to DHCD;
- (e) Compliance with relevant regulations; and
- (f) Any other activities required by DHCD.

2215.5 Community based organizations under contract with DCHD shall be Certifying Entities and in addition to the responsibilities in §2215.4, shall also counsel and train Households on the Inclusionary Zoning program.

2216 CLOSING AND LEASE SIGNING PROCEDURES

2216.1 Prior to closing, the Owner shall attach the following as an exhibit to the deed conveying a For Sale Inclusionary Unit:

- (a) The Declaration(s) of Eligibility provided to the Owner by the Eligible Household purchasing the Inclusionary Unit; or
- (b) Such portions of the document designated by DHCD.

2216.2 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.

2216.3 Within seventeen (17) days after closing, the new Inclusionary Unit Owner shall provide DHCD with a fully signed copy of the Closing Disclosure and a copy of the new deed (including the Declaration of Eligibility).

2216.4 Prior to the signing of each lease or sales contract, the Owner shall provide a copy of the Inclusionary Development Covenant to the Eligible Household.

2216.5 A lease rider shall be attached to the lease agreement for each Rental Inclusionary Unit. The lease rider shall contain, but shall not be limited to, the following terms:

- (a) The Tenant shall provide a Certification of Income, Affordability, and Housing Size in accordance with §2214.3;
- (b) The Tenant shall provide a Declaration of Eligibility in accordance with §2214.2;
- (c) The Tenant shall annually confirm eligibility for the Inclusionary Unit based on the Annual Income requirements and §2217.6;
- (d) The Tenant shall provide the information and documents required by §2217.1 within the time period specified;

- (e) The Inclusionary Unit shall be the principal residence of all Household members who occupy the Inclusionary Unit;
- (f) The Tenant shall confirm receipt and acknowledgment of the Inclusionary Development Covenant; and
- (g) The Tenant shall not make intentional misrepresentations to DHCD or the Certifying Entity.

2216.6 Within thirty (30) days after the signing of each lease, the Inclusionary Development Owner shall provide DHCD with a fully signed copy of each lease, including a copy of the lease rider and the Declaration of Eligibility.

2216.7 All members of the Household who are eighteen (18) years of age or older shall sign the lease and lease rider.

2216.8 Once a Household signs a lease for a Rental Inclusionary Unit or closes on the purchase of a For Sale Inclusionary Unit, that Household will be removed from the registration list. The Household may re-register pursuant to §2209.

2217 RESPONSIBILITIES OF RENTAL INCLUSIONARY DEVELOPMENT OWNERS AND TENANTS

2217.1 No later than sixty (60) days before each anniversary of the first day of the lease, an Eligible 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 DHCD:

- (a) A statement as to whether the Tenant intends to renew the lease or vacate the Inclusionary Unit; and
- (b) If the Tenant states that he or she intends to renew the lease:
 - (1) The names and ages of each person residing in the unit;
 - (2) A Certification of Income, Affordability, and Housing Size that meets the requirements of §2214.3; and
 - (3) A Declaration of Eligibility that meets the requirements of §2214.2.

2217.2 The Owner may, in the Owner’s discretion, extend the deadline established by §2217.1 in writing provided that the deadline shall not be extended beyond the last day of the Tenant’s lease.

- 2217.3 If a Tenant is in violation of a lease agreement or rider, the Inclusionary Development Owner may provide to the Tenant a notice to vacate in accordance with D.C. Official Code §42-3505.01(b), as may be amended.
- 2217.4 If a notice to vacate is provided pursuant to §2217.3, the Inclusionary Development Owner may permit the Household to continue to occupy the unit at the current rent for no more than six (6) months after the Inclusionary Development 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.
- 2217.5 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.
- 2217.6 At annual recertification, if an Eligible Household's Annual Income is less than or equal to one hundred forty percent (140%) of the higher of
- (a) The then-current maximum Annual Income; or
 - (b) The maximum Annual Income at the time of initial lease execution
- for the Inclusionary Unit, the Eligible Household shall be considered income eligible and may remain in the Inclusionary Unit, continuing to pay the amount of rent associated with the MFI Level of that Inclusionary Unit.
- 2217.7 At annual recertification, if an Eligible Household's Annual Income is greater than one hundred forty percent (140%) of the higher of
- (a) The then-current maximum Annual Income; or
 - (b) The maximum Annual Income at the time of initial lease execution
- for the Inclusionary Unit, the Household is no longer income eligible for the original MFI Level of the Inclusionary Unit.
- 2217.8 If a Household is no longer income eligible for the original MFI Level of the Inclusionary Unit, as described in §2217.7, and the Inclusionary Development has Inclusionary Units with higher MFI Levels, and if the Household would qualify for such higher MFI Level Inclusionary Unit, the existing Inclusionary Unit may be re-designated as a higher MFI Level Inclusionary Unit, allowing the Household to remain in the same Inclusionary Unit. However, the original mix of MFI Levels must be restored within the Inclusionary Development as soon as possible, so the property manager should re-designate a new unit with the same number of Bedrooms to replace the lower MFI Level Inclusionary Unit that was re-designated when one becomes available. The property manager or Inclusionary

Development Owner must notify DHCD in writing that a re-designation is necessary as soon as it is determined and identify the unit to be re-designated.

2217.9 If a Household is no longer income eligible for the original MFI Level of the Inclusionary Unit, as described in §2217.7, and the Inclusionary Development does not have Inclusionary Units with higher MFI Levels for which the Household qualifies, the Household may remain in the Inclusionary Unit if the Household agrees to pay market rate rent. In such case, the Inclusionary Unit may be re-designated as a Market Rate Unit, allowing the Household to remain in the same unit. However, the original mix of MFI Levels must be restored within the Inclusionary Development as soon as possible, so the property manager should re-designate a new unit with the same number of Bedrooms to replace the Inclusionary Unit that was re-designated when one becomes available. The property manager or Inclusionary Development Owner must notify DHCD in writing that a re-designation is necessary as soon as it is determined and identify the unit to be re-designated.

2217.10 Annually within fifteen (15) days after the anniversary of the first lease agreement for an Inclusionary Unit in a Rental Inclusionary Development, the Inclusionary Development Owner shall submit a report to DHCD 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 DHCD pursuant to §2206, if applicable;
- (d) For each occupied Rental Inclusionary Unit, the names of all occupants, whether each occupant is over or under the age of eighteen (18), 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 Inclusionary Development Owner's information and knowledge, the Annual Income of each Eligible Household occupying each Rental Inclusionary Unit complies with the income limits applicable to the Rental Inclusionary Unit;
- (f) A copy of each new and revised Certification of Income, Affordability, and Housing Size provided in accordance with §2214.3 or §2217.1;

- (g) A copy of each new and revised Declaration of Eligibility provided in accordance with §2214.2 or §2217.1;
- (h) A copy of each lease signed in the preceding year;
- (i) A certification that for each Rental Inclusionary Unit that became available over the course of the reporting year Households were selected to occupy the Rental Inclusionary Units pursuant to a lottery or the approved marketing plan; and
- (j) Which, if any, units were re-designated and to which MFI level or to market rate.

2218 RESPONSIBILITIES OF INCLUSIONARY UNIT OWNERS

2218.1 Annually on the anniversary of the closing date for a For Sale Inclusionary Unit, the Inclusionary Unit Owner shall submit to DHCD a certification on such form as may be prescribed by DHCD of continued unit occupancy as the For Sale Inclusionary Unit Owner’s principal residence.

2219 DETERMINATION OF MAXIMUM RESALE PRICE

2219.1 The Maximum Resale Price (“MRP”) shall be equal to the greater of:

- (a) The original purchase price during the first year of ownership, or (for all subsequent years) the Maximum Resale Price of the previous year, multiplied by the annual rate of change in the MFI over a ten year period starting with the first MFI published by HUD after the purchase of the Inclusionary Unit by the Inclusionary Unit Owner. The resulting formula for the new Maximum Resale Price in any given year “n” is therefore $MRP_n = \underline{MRP_{n-1}} + (MRP_{n-1} \times F_n)$ (“Formula”), where:
 - (1) n = is the current MFI year starting from the most recent publication of the MFI by HUD; and
 - (2) F_n = the rate of appreciation of the current MFI of any given year “n.” F_n is calculated by determining the ten year compounded annual growth rate of the MFI; or
- (b) The maximum purchase price for the same unit type from the current published Maximum Price and Purchase Schedule as of the date of the Notice of Availability.

2219.2 Upon the submission of a Notice of Availability by an Inclusionary Unit Owner to DHCD, the Maximum Resale Price may be adjusted for the value of all the

Eligible Capital Improvements and Eligible Replacement and Repair Costs made to the property during that Inclusionary Unit Owner's ownership of the Inclusionary Unit to the extent they are permanent in nature and add to the market value of the property at the percentage of cost indicated:

- (a) Eligible Capital Improvements, which shall be valued at one hundred percent (100%) of reasonable cost, as determined by DHCD, and
- (b) Eligible Replacement and Repair Costs, which shall be valued at fifty percent (50%) of reasonable cost, as determined by DHCD.

2219.3 The Owner of a For Sale Inclusionary Unit subject to an Inclusionary Development Covenant recorded prior to the effective date of these regulations may choose to be subject to the terms of §2219.1 effective as of

- (a) The recordation date of the Inclusionary Development Covenant; or
- (b) The date of submission of the Notice of Availability,

depending on which time will result in a higher Maximum Resale Price.

2219.4 Ineligible Costs shall not be considered in determining the value of Eligible Capital Improvements and Eligible Replacement and Repair Costs.

2219.5 The value of improvements may be determined by DHCD based upon documentation provided by the Inclusionary Unit Owner or, if not provided, upon a standard value established by DHCD.

2219.6 DHCD may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if DHCD finds that the improvement diminished or did not increase the fair market value of the Inclusionary Unit.

2219.7 DHCD may reduce the value of an improvement claimed by the Inclusionary Unit Owner if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the improvement.

2219.8 The Owner shall permit a representative of DHCD to inspect the Inclusionary Unit upon request to verify the existence and value of any improvements that are claimed by the Inclusionary Unit Owner.

2219.9 An allowance may be made in the Maximum Resale Price for the payment of legal fees, closing costs (including, but not limited to, title insurance and filing fees) and real estate broker or salesperson fees associated with the sale of the Inclusionary Unit if written approval is obtained from DHCD.

2219.10 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 Maximum Resale Price.

2220 RENTAL OF A FOR SALE INCLUSIONARY UNIT

2220.1 An Inclusionary Unit Owner may temporarily lease a For Sale Inclusionary Unit in accordance with the provisions of this §2220 if such lease is not otherwise prohibited by applicable cooperative, condominium, or homeowner association rules.

2220.2 Upon written submission of a request for a waiver of the principal occupancy requirement for a temporary absence from an Inclusionary Unit and supporting documentation, DHCD may permit an Inclusionary Unit Owner to temporarily lease a For Sale Inclusionary Unit for a period not to exceed twelve (12) months per request. DHCD shall approve or disapprove the request in its sole discretion considering the evidence before it. Requests to lease a For Sale Inclusionary Unit shall be based on a temporary need of the Owner to vacate the Inclusionary Unit, with intent to return. For example, such needs may include military service or another reason causing the Owner to temporarily leave the District metropolitan area.

2220.3 If the request or any subsequent renewal is denied by DCHD the Inclusionary Unit Owner must reoccupy the unit as their principal residence within ninety (90) days after the denial or sell the unit in accordance with §2206 within one hundred eighty (180) days after the denial.

2220.4 An Inclusionary Unit Owner who is leasing a For Sale Inclusionary Unit in accordance with this §2220 shall select tenant Households pursuant to §2208.

2220.5 Inclusionary Unit Owners that are approved by DHCD to temporarily lease their For Sale Inclusionary Units, and tenants of these For Sale Inclusionary Units, shall comply with the requirements in §2217.

2220.6 An Inclusionary Unit Owner permitted to temporarily lease a For Sale Inclusionary Unit shall provide DHCD with written notification within five (5) days when a tenant takes possession and a copy of the lease and shall provide DHCD with written notification within five (5) days when a tenant vacates the For Sale Inclusionary Unit.

2220.7 The maximum rent charged during a temporary lease of a For Sale Inclusionary Unit shall be the rent set forth in the Rent and Price Schedule in place on the beginning date of the lease.

- 2220.8 A condominium fee or assessment that a tenant of a For Sale Inclusionary Unit leased under this §2220 is required to pay pursuant to the terms of his or her lease shall be considered part of the rent of the tenant when determining whether the rent charged is consistent with the Maximum Rent and Purchase Price Schedule.
- 2221 CONVERSION OF A RENTAL INCLUSIONARY DEVELOPMENT TO A FOR SALE INCLUSIONARY DEVELOPMENT**
- 2221.1 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 DCRA and a Certificate of Inclusionary Zoning Compliance is issued by DCRA pursuant to the provisions set forth in §2203.
- 2221.2 Following the issuance of a new Certificate of Inclusionary Zoning Compliance under this §2221, the Inclusionary Development Owner shall, if requested by DHCD, record a new or amendatory Inclusionary Development Covenant, applicable to a For Sale Inclusionary Development that complies with §2204 prior to the conveyance of any For Sale Inclusionary Unit.
- 2221.3 The application for a Certificate of Inclusionary Zoning Compliance filed under this §2221 shall comply with §2202.4.
- 2221.4 All conversions of use of a Rental Inclusionary Development to a condominium or cooperative must comply with the conversion procedures established 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”).
- 2221.5 Tenants occupying Rental Inclusionary Units converted to For Sale Inclusionary Units shall have the same rights as are provided in the Conversion Act.
- 2221.6 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.
- 2221.7 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 Inclusionary Unit pursuant to §208 of the Conversion Act, the Inclusionary Development Owner shall furnish DHCD with a Notice of Availability pursuant to §2206 and register the Inclusionary Unit with the Housing Locator Website.

2222 SALE BY HEIRS

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 if the Household of such person meets the requirements of these regulations. If the Household of such person does not meet the requirements of these regulations, such person shall provide DHCD with a Notice of Availability in accordance with §2206.

2223 FORECLOSURE

2223.1 If title to a For Sale Inclusionary Unit is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in first position, or a mortgage in first position is assigned to the Secretary of HUD, the Inclusionary Development Covenant shall be released against the Inclusionary Unit in accordance with the provisions of the Zoning Commission’s Inclusionary Zoning Regulations (11-C DCMR Chapter 10).

2224 VIOLATIONS AND OPPORTUNITY TO CURE

2224.1 Prior to exercising the authority to revoke a building permit or Certificate of Occupancy pursuant to §1041.04 of the Inclusionary Zoning Act, DCRA 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 designated cure period, DCRA shall not exercise its authority to revoke a building permit or Certificate of Occupancy pursuant to §1041.04 of the Inclusionary Zoning Act. DCRA may extend the designated cure period for good cause shown.

2224.2 DCRA shall not revoke a building permit or Certificate of Occupancy pursuant to §1041.04 of the Inclusionary Zoning Act except for a willful, substantial violation of the Inclusionary Zoning Act or this chapter.

2225 WAIVER

2225.1 The Director of DHCD may, at his or her discretion, upon the request of an agency of the District (including DHCD) or the written request of an Owner of an Inclusionary Development or Unit, a lessee of an Inclusionary Unit, or a Household seeking to own or rent an Inclusionary Unit (the “Requester”), waive one or more of the provisions of this chapter in DHCD’s sole and absolute discretion if waiver of the provision:

- (a) Supports the general purposes of the Inclusionary Zoning Program as described in 11-C DCMR §1000.1, and

- (b) Would not directly or indirectly grant relief from any requirement of or permit any act prohibited by the Zoning Commission's Inclusionary Zoning Regulations or Inclusionary Zoning Act.

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 CFR §5.609 as of the effective date of these amended regulations.

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 with an application for a building permit for an Inclusionary Development.

Certificate of Inclusionary Zoning Compliance - a document issued by the DCRA's Office of the Zoning Administrator certifying that an Inclusionary Development meets the Inclusionary Zoning Program requirements.

Certificate of Occupancy - a document issued by the DCRA's Office of the Zoning Administrator certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

Certifying Entity – DHCD or a third party entity approved by DHCD pursuant to §2215.

DCRA – the District Department of Consumer and Regulatory Affairs.

Dependent – an individual as defined in §152 of the United States Internal Revenue Code (26 USC §152).

District – the District of Columbia.

DHCD – the District 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) removal of toxic substances, such as asbestos, lead, mold, or mildew; (vii)

insulation or upgrades to double-paned windows or glass fireplace screens; and (viii) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods.

Eligible Household – a Household with a total Annual Income adjusted for Household size equal to or less than fifty percent (50%) of the MFI, sixty percent (60%) of the MFI, eighty percent (80%) of the MFI, or other percentage of the MFI established by an order approving a Planned Unit Development pursuant to Chapter 3 of Title 11-X DCMR.

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; (iv) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (v) replacement of window sashes; (vi) fireplace maintenance or in-kind replacement; (vii) heating system maintenance and repairs; and (viii) 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.

Full Time Student - a person who is enrolled in a class load that is considered full-time for day students under the standards and practices of the college or university attended by that person.

Guardian - a person who is appointed by court order and who is charged with the care, custody, and responsibility of a person under the age of eighteen (18) years.

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.

Housing Locator Website – a website established or designated by the District or DHCD pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code §§42-2131 *et seq.*).

HUD – the United States Department of Housing and Urban Development.

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, corporation, other entity, 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 as required by the Inclusionary Zoning Program.

Inclusionary Unit Owner – a Household member or members that own(s) a For Sale Inclusionary Unit.

Inclusionary Zoning Act – the Inclusionary Zoning Implementation Amendment 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, including policies adopted by DHCD pursuant thereto.

Ineligible Costs – 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 DHCD. 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.

Insurance – hazard insurance for single family For Sale Inclusionary Units and mortgage insurance for any For Sale Inclusionary Unit.

Lives in the District of Columbia - the situation where a person maintains a place of abode in the District as his or her actual, regular, and principal place of residence, as reasonably determined by DHCD or its designee.

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

Maximum Resale Price – the Maximum Resale Price described in §2219.

Median Family Income, or MFI – the median family income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by HUD, adjusted for household size without regard to any adjustments made by HUD for the purposes of the programs it administers. Adjustments of Median Family Income for household size shall be made as prescribed in §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)).

MFI Level – the percentage of MFI referred to in the Inclusionary Zoning Act and/or Zoning Regulations (11-C DCMR §§1000 *et seq.*), for example, 50% MFI, 60% MFI or 80% MFI.

New Communities Initiative – a District program designed to revitalize severely distressed subsidized housing and redevelop neighborhoods into vibrant mixed-income communities.

Notice of Availability – the notice required to be provided to DHCD by an Owner in accordance with §2206.

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

Parent - the natural or adoptive mother or father of a person.

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

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 member or members that occupy a Rental Inclusionary Unit.

Utilities – water, sewer, electricity, natural gas, trash, and any other fees required by the Inclusionary Development Owner, property manager, or condominium or homeowners’ association in order to occupy the Inclusionary Unit, including but not limited to mandatory condominium, homeowners’ association, amenity or administrative fees.

Works in District of Columbia - the situation where a person reports to work in the District, irrespective of any travel for work or telecommuting, as reasonably determined by DHCD or its designee.