Coalition for Smarter Growth
DC • MD • VA

December 3, 2020

Hon. Phil Mendelson
Chairman, Committee of the Whole
Council of the District of Columbia
1350 Pennsylvania Ave, NW
Washington, DC 20004
Via cow@dccouncil.us

RE: In support of swift adoption of B23-736; recommended revisions to long-term affordability references to align with current DC law, official practice, and policy

Dear Chairman Mendelson:

Thank you for holding the hearing on B23-736, the Comprehensive Plan Amendment Act, on November 12 and 13. We want to reiterate our strong support for swift adoption of the Comp Plan. To delay past early 2021 will cause great harm to the city by continued delay of hundreds of affordable housing projects waiting at the Zoning Commission; impeding new land use policy goals of 15% affordable housing in each planning area in the city; stalling expanded housing capacity near transit, which is complemented by an expanded affordable housing IZ requirement.

If amendments are to be made to the April draft of the Comp Plan, we wish to propose the following, detailed below. These changes are consistent with much of the testimony heard at the hearing expressing a desire to strengthen the Comp Plan's policy commitments to preventing displacement of low-income residents and sustain affordable housing investments to ensure that a diversity of housing opportunities can be available to low and moderate income households across the city over time.

We especially want to associate ourselves with and endorse the testimony and follow up letter from the Douglass Community Land Trust.

The Comp Plan makes several references to the desirability of permanent affordability terms for affordable housing investments. However, it fails to accurately account for current DC law, policy and practice. We recommend correcting those references so that they align with, and build on the current state of practice in the District. The following cite specific sections of the April 2020 Comp Plan draft, and provide comments and alternative language.

1. Regarding Section 307.12 Policy LU-1.4.3: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations – revise to accurately reflect DC law, policy and practice.

> **307.12 Policy LU-1.4.3: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations**
> **Explore mechanisms to encourage permanent affordable rental and for-sale multi-family housing adjacent to Metrorail stations, given the need for accessible affordable housing and the opportunity for car-free and car-light living in such locations. 307.12**

Comment: While we concur that we should support permanent affordability (especially near Metro stations), this statement fails to refer to existing District policies and practices. We recommend updating this statement to accurately reflect current law and official practice. To state that the District should "explore mechanisms to encourage" ignores existing DC law and District government policy and practice. The District should build on and expand the use of current mechanisms. The District has experience with several permanent affordability mechanisms, thus it is far past the stage of "exploring."

Revision 1: We recommend the following revision (in ALL CAPS and yellow highlighter):

> 307.12 "~~Explore mechanisms to encourage~~ CONTINUE TO EXPAND THE USE OF PERMANENT AFFORDABILITY MECHANISMS IN THE CONSTRUCTION OF affordable rental and for-sale multifamily housing adjacent to Metrorail stations,…"

Further evidence to justify this revision:

Beyond the DC Zoning Commission's decision to establish "life of the development" as the affordability term for Inclusionary Zoning units in 2006, the DC Council and Mayor have acted since then several times to use additional mechanisms for permanent affordability. For example, one permanent affordability requirement enacted into law by the DC Council is for the sale of public land, which sets aside 20-30% of units as affordable. The DC Code states:

> DC Code § 10–801. Authorization; description of property; submission and approval of resolution; reacquisition rights; notice.
>
> (b-3)(1)(C) The units dedicated as affordable housing pursuant to subparagraphs (A) and (B) of this paragraph shall remain affordable-housing units for the life of the ground lease if the land disposition is by ground lease, or shall remain affordable-housing units in perpetuity, secured by a covenant running with the land that may be extinguished at the sole discretion of the District;

Another official practice by the District government is found in DHCD funding proposal evaluations. For example, the DHCD 2019 Consolidated Request for Proposals for Affordable Housing Projects scoring process strongly encourages "permanent, perpetual affordability" by awarding maximum points to applications that propose in perpetuity terms for the affordable units. DHCD's Requests for Proposals over the past several years have awarded maximum points to applications, and the majority of projects selected, with these criteria:

> 16. Affordability Period Restriction (maximum 5 Points) Applications documenting that the owner will maintain the low-income units in compliance for a designated period beyond the affordability period required by the requested funding source will be awarded prioritization scoring points. Maximum points will be awarded to projects that commit to affordability in perpetuity.
>
> 5 points = Applicant commits to placing a permanent, perpetual affordability covenant on the property.
> 2 points = Applicant commits to a 60-year affordability period or longer.
> 1 point = Applicant commits to a 50-year affordability period or longer.
> 0 points = The project will meet minimum required affordability period.

2. Regarding section 510.9 Policy, H-2.1.5: Long-Term Affordability Restrictions – correct to accurately reflect DC law, policy and practice. Current language:

> ~~509.9~~ 510.9 Policy H-2.1.5: Long-Term Affordability Restrictions
> ~~Ensure that a~~**A**ffordable housing units that are created or preserved with public financing ~~are~~ **should be** protected by long-term affordability restrictions and are monitored to prevent their transfer to non-qualifying households. Except where precluded by ~~federal programs~~ program requirements, affordable units should remain affordable for ~~the life of the building~~ **as long as possible and align with the length and magnitude of the subsidy. For land disposition and affordable housing tied to zoning relief, affordability should last for the life of the building**, with equity and asset build up opportunities provided for ownership units. ~~509.9~~ 510.9

Comment: We recommend revising this language to better reflect current DC policy, law and practice. The affordability term for inclusionary zoning is "life of the development," and "in perpetuity" for affordable units in public land dispositions, as established in law. Further, in perpetuity is strongly prioritized in DHCD funding criteria. We recommend that this section also provide clearer references to shared equity approaches for homeownership, and landleases as long-term affordability restrictions currently used in DC as tools that should be supported and expanded.

The removal of the current IZ standard of "life of the building" and replacement with "as long as possible" is a retreat from current law and practice. We recommend not weakening and undermining current law and practice, but affirming and building on it. The section introduces

new qualifications for long-term affordability mechanisms which have already established in DC law, suggesting that the length of the affordability term be aligned with the "magnitude of the subsidy." This new qualification undermines current law and practice that balances the goal of long-term affordability with the willingness of developers to agree to long-term affordability restrictions. The section further recommends that a land disposition last for the life of the building -- which contradicts current law enacted by the DC Council and Mayor, which requires that public land dispositions preserve the affordability of units for in perpetuity. As the proposed language undermines current DC law, policy and practice, we recommend that it be revised.

Revision 2: We recommend the following, using yellow highlights for our additions or restorations, ALL CAPS are new additions, and double strikethroughs for deletions.

> **~~509.9~~ 510.9 Policy H-2.1.5: Long-Term Affordability Restrictions**
> ~~Ensure that a~~**A**ffordable housing units that are created or preserved with public financing ~~are~~ **should be** protected by long-term affordability restrictions and are monitored to prevent their transfer to non-qualifying households. Except where precluded by ~~federal programs~~ program requirements, affordable units should remain affordable for the life of the building ~~**as long as possible and align with the length and magnitude of the subsidy.**~~ **For land disposition and affordable housing tied to zoning relief, affordability should last** IN PERPETUITY, for the life of the building OR A SIMILAR PERMANAENT AFFORDABILITY TERM ACCORDING TO CURRENT LAW, POLICY OR BEST PRACTICE. ~~with equity and asset build up opportunities provided~~ ~~F~~ FOR OWNERSHIP UNITS, INCLUDING FEE SIMPLE, LIMITED EQUITY CO-OPERATIVES, AND COMMUNITY LAND TRUST OWNERSHIP MODELS USING LANDLEASES, AND COVENANTS, SHARED EQUITY AND ASSET BUILDING OPPORTNITIES SHOULD BE PROVIDED, IN ADDITION TO CONTINUED HOMEOWNER SUPPORT THROUGH THE PROVISION OF ONGOING STEWARDSHIP SERVICES. ~~509.9~~ 510.9

3. Restore and update policy support for land trusts in Section 504.24 Action H-1.2.G

Currently deleted in April 2020 draft:

> ~~504.24 Action H-1.2.G: Land Trusts Support the formation of one or more community land trusts run by public, nonprofit, or other community-based entities. The mission of the trust would be to acquire land while providing long-term leases to developers of rental and for-sale units. This approach helps ensure that the units remain affordable indefinitely.~~ ***Completed – See Implementation Table. 504.24***

We recommend restoring and updating this Action to reflect today's reality that the Douglass Community Land Trust (Douglass CLT) has been incorporated to operate District-wide, and is actively acquiring and managing property. While it's a major advance for the District to host a growing Community Land Trust, Douglass CLT needs continued official policy support in order

to reach scale and deliver on its mission to provide lasting community assets and build assets for households, while supporting the District's affordability goals and drive toward racial and economic equity. Community Land Trusts should be regarded as an active tool to help fulfill the District's affordable housing and anti-displacement goals, rather than be considered a one-time action that has been completed. Successful CLTs operate in partnership with municipal government, and restoring language around CLTs to the Comp Pan is fundamental to that partnership.

Revision 3: We recommend the restoration and updating of Action H-1.2.G:

> 504.24 Action H-1.2.G: Land Trusts
> Support ~~the formation of one or more~~ community land trusts (CLTs) IN THEIR ONGOING EFFORTS TO PRODUCE, SECURE AND STEWARD AFFORDABLE RENTAL AND OWNERSHIP HOUSING AND COMMERCIAL SPACES THAT WOULD ~~run by public, nonprofit, or other community-based entities. The mission of the trust would be to acquire land while providing long-term leases, to developers of rental and for-sale units. This approach helps ensure that the units~~ remain affordable ~~indefinitely~~ IN PERPETUITY, PREVENTING THE DISPLACEMENT OF CURRENT AND FUTURE DISTRICT RESIDENTS AND BUSINESSES. CLTS PROMOTE RACIAL AND ECONOMIC EQUITY THROUGH THE ACQUISITION AND CONTINUED OWNERSHIP OF LAND, MAINTENANCE OF AFFORDABILITY BY COVENANT, OR SIMILAR LEGAL MECHANISM. A CLT HAS (1) A CHARITABLE PURPOSE CONSISTENT WITH ONE OR MORE OF THE CHARITABLE PURPOSES SET FORTH IN 26 U.S.C. § 501(C)(3); (2) A MEMBERSHIP OPEN TO LESSEES OF CLT PROPERTY AND TO COMMUNITY REPRESENTATIVES FROM THE NEIGHBORHOODS IT SERVES, AND ENTITLED TO ELECT A MAJORITY OF THE SEATS ON THE BOARD OF DIRECTORS AND APPROVE AMENDMENTS TO THE ORGANIZATION'S BYLAWS; (3) A THREE-PART BOARD OF DIRECTORS COMPOSED OF EQUAL NUMBERS OF (I) CLT LESSEES, (II) COMMUNITY REPRESENTATIVES; AND (III) ANY OTHER CATEGORY OF PERSONS DESCRIBED IN THE BYLAWS OF THE ORGANIZATION; AND (4) USES A MODEL THAT SERVES THE WIDEST GROUP OF LOW TO MODERATE INCOME DISTRICT RESIDENTS AND PROMOTES THE EFFICIENT USE OF MUNICIPAL RESOURCES THROUGH ECONOMIES OF SCALE.

4. Improve policy support for co-operatives and co-housing

Current language:

> **Section 505.10 Policy H-1.3.4: Co-operatives and Co-housing**
> Encourage cooperatives, shared housing, and co-housing (housing with private bedrooms, but shared kitchens and common areas) as a more affordable alternative to condominiums. **Explore how both housing types might support multi-generational households. Such** housing ~~is~~ **should be** appropriately regulated to avoid adverse effects on surrounding residences and neighborhoods. 505.10

We strongly support shared equity housing approaches such as limited equity co-operatives, and believe they should be paired with technical assistance and capacity support, items not mentioned in Section 505.10. Rather it calls for them to be "appropriately regulated" to avoid "adverse effects on surrounding residences and neighborhoods." This negative language suggests the District's role in support of co-ops lies largely in enforcement. We suggest the policy take a more supportive tone to ensuring the success of co-operatives and co-housing.

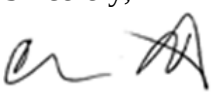
Revision 4:

> **Section 505.10 Policy H-1.3.4: Co-operatives and Co-housing**
> Encourage cooperatives, shared housing, and co-housing (housing with private bedrooms, but shared kitchens and common areas) as a more affordable alternative to condominiums. **Explore how both housing types might support multi-generational households. Such** housing ~~is~~ **should be** ~~appropriately regulated to avoid adverse effects on surrounding residences and neighborhoods~~ SUPPORTED TO ENSURE THE SUSTAINABILITY OF THE QUALITY OF MODERATE AND LOW PRICED HOUSING, AND ITS VALUE AS A SHARED EQUITY INVESTMENT FOR MEMBER/OWNERS. 505.10

Conclusion

Thank you for considering our proposed amendments. As we have testified, we urge the Council to adopt the April draft Comp Plan amendments *without delay*. More harm is done by delaying implementation of the proposed update than is gained by perfecting every cause in this update cycle.

Sincerely,



Cheryl Cort
Policy Director