

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARING**

**TIME AND PLACE:** Thursday, November 6, 2014, @ 6:30 p.m.  
Jerrily R. Kress Memorial Hearing Room  
441 4<sup>th</sup> Street, N.W. Suite 220-S  
Washington, D.C. 20001

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 14-13 (Office of Planning – Text Amendments to Chapters 1, 4, 5, 6, 7, 8, 9, 12, 15, 19, 26, 27, 29, and 33: Definitions, Use Permissions, and Size Restrictions for Rooftop Penthouses)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

On July 24, 2014, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning proposing several text amendments to the Zoning Regulations (11 DCMR). The Office of Zoning received a supplemental report from the Office of Planning on September 2, 2014. At a special public meeting on September 4, 2014, the Zoning Commission set down this case for a public hearing, including alternative concepts offered by the Zoning Commission. The OP report and supplemental report served as the supplemental filing described in § 3013.1.

The proposed amendment would permit the implementation of changes recently made by Congress to The Act to Regulate the Height of Buildings in the District of Columbia of 1910 (the Height Act). These changes now permit the occupancy of rooftop penthouses of one story and 20 feet or less. Because the current Zoning Regulations pertaining to penthouse are in some instances more stringent than what the amendment would permit, the changes to the Height Act cannot be given effect until corresponding changes to the Zoning Regulations are also adopted

As will be more specifically detailed in the chart that follows, the amendments proposed to the Zoning Regulations identify, among other things, the uses that may be allowed in penthouses, the height and other area limitations that apply to the structures, and the affordable housing requirements that are generated by either residential or non-residential uses. Because the one story Height Act limitation only applies if a penthouse requires a waiver to exceed the Height Act's limit, the proposed rules would permit a two-story penthouse in certain instances when its entire volume is below the Height Act maximum.

Since the petition only sought changes to the text of the Zoning Regulations, and not the zoning map, the Commission's decision to hear the petition did not change the *status quo*. Any building permit application that has or will be filed during the pendency of this proceeding will be reviewed in accordance with the Zoning Regulations now in place unless or until amendments are adopted and become effective.

As is always the case, the Commission reserves the right not to adopt any or all of the text proposed and testimony arguing for the retention of the existing rules will be received and considered.

After consideration of the OP proposals, the Commission took action to set down the following proposed amendments and alternatives for public comment, as summarized in the following table. The chart also indicates the two instances where the Commission invited the public to comment on two alternatives for which no specific text is offered. Those alternatives are shown in underline.

The specific text of the proposed amendment appears after the summary chart.

**SUMMARY OF PROPOSED AMENDMENTS AND ALTERNATIVES.**

<b>Section</b>	<b>Summary Amendment</b>
<b>199, Definitions</b>	Amend the definition for "Story" to remove the size limitation on a penthouse, beyond which it is considered a story. Add a new definition for "Penthouse."

Section	Summary Amendment
	Add a new definition for "The Height Act."
<b>Chapter 4 - RESIDENTIAL</b>	
<b>400.7</b> HEIGHT OF BUILDINGS OR STRUCTURES (R)	Maintain the 1:1 setback requirement from building exterior walls. Limit height of a penthouse on the roof of a one-family dwelling or flat to 10 feet; increase the height of a penthouse on other buildings and structures to 20 feet, consistent with recently adopted changes to The Height Act.
<i>Alternative 1 (ZC)</i> <i>400.7 (b)</i>	<i>Maintain 1:1 setback requirement for penthouses, but clarify that the setback would be required from any wall, except from the wall of a court not facing a public street; or from a wall along a lot line (generally a side lot line) where the building on the adjacent lot is or could by-right be taller than subject building.</i>
<i>Alternative 2 (ZC)</i> <i>400.7(d)</i>	<i>Retain the current permitted height of 18'-6" for penthouses in zones other than R-1 through R-4, where it would be limited to 10' in height.</i>
<i>Alternative 3 (ZC)</i> <i>400.7(e)</i>	<i>Clarify that solar panels and wind turbines are included within the rule prohibiting mechanical equipment from extending above the permitted penthouse height.</i>
<b>411</b> PENTHOUSES (R)	<p>Allow any uses permitted within the zone to be in the penthouse, except that a penthouse located within the R-1 through R-4 zones, or on any one-family dwelling or flat in any other zone may only be used to house mechanical equipment, stairway and elevator overrides, or ancillary space directly associated with a rooftop deck. <u>The Zoning Commission invited the public to comment on whether some uses permitted within the zone, such as a restaurant or bar should be permitted within a penthouse only by special exception and, if so, whether special conditions, including radius and noise limitations, should be considered by the BZA or the Commission when considering such an application.</u></p> <p>Allow some or all penthouse walls to be of unequal height.</p> <p>Exempt penthouse square footage from building FAR calculations. <u>The Zoning Commission invited the public to comment on whether penthouse square footage should be included within the overall building FAR limit.</u></p> <p>Whether or not penthouse GFA is included in FAR, repeal the provision which currently limits the penthouse to .37 FAR.</p> <p>Repeal the provision which currently limits penthouses to 1/3 the area of the roof below, other than for the R-1 through R-4 zones or on any one-family dwelling or flat.</p> <p>Permit safety railings as required by the construction code to not be considered a penthouse.</p> <p>Permit 2 stories within a penthouse, except a penthouse would be limited to one story:</p> <ul style="list-style-type: none"> <li>• Within the R-1 through R-4 zones;</li> <li>• If located on the roof of a one-family dwelling or flat; or</li> <li>• If any portion of the penthouse would exceed the height limit established for the building by the Height Act.</li> </ul> <p>For a building subject to a Zoning Commission PUD or Design Review approved prior to the adoption of these penthouse text changes, permit a penthouse addition request to be filed and considered as a minor modification.</p>
<i>Alternative 4 (ZC)</i> <i>411.2</i>	<i>For R-1 through R-4, one family dwelling, or flat, not permit penthouses for or ancillary space directly associated with a rooftop deck, but instead permit penthouses for the more limited purpose of roof deck related storage.</i>
<i>Alternative 5 (ZC)</i> <i>411.6</i>	<i>Reword but retain provision requiring penthouse walls to be of equal height but establish a new provision allowing screening walls around open mechanical equipment to be of one, different height.</i>
<i>Alternative 6 (ZC)</i>	<i>Add clarification to the existing provision that permits special exception relief from</i>

<b>Section</b>	<b>Summary Amendment</b>
<u>411.11</u>	<i>roof structure requirements that the type of “operating difficulties” that warrant relief involve difficulties in meeting building code requirements for roof access and stairwell separation or elevator stack location to maximize efficiencies in lower floors and similar issues.</i>
<u>Alternative 7 (ZC)</u> <u>411.18</u>	<i>Do not include the section allowing a penthouse to be two levels.</i>
<b>414</b> (new section) AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE NON- RESIDENTIAL GROSS FLOOR AREA	Establish a requirement for the provision of on-site or off-site affordable housing for any habitable penthouse non-residential space greater than 1,000 sq.ft. in area, generally consistent with the existing Housing Linkage requirement for new office space gained through a Planned Unit Development (§ 2404.6). Extent of housing to be produced would be dependent upon the adjacency of development.  Permit flexibility in the provision of the affordable housing off-site, or permit an in lieu contribution to a housing trust fund, consistent with the existing Housing Linkage requirement.
<u>Alternative 7 (ZC)</u> <u>414.2</u>	<i>Exempt enclosed penthouse recreation space from the housing linkage requirement.</i>
<u>Alternative 8 (ZC)</u> <u>414.3</u>	<i>Expand applicability of the affordable housing requirement by eliminating the proposed exemption for buildings subject to a DD housing requirement.</i>
<u>Alternative 9 (ZC)</u> <u>414.6</u>	<i>Increase the affordable housing requirement when new or rehabilitated housing is proposed to be provided by the developer by requiring one square foot of affordable housing for every one square foot of new habitable non-residential penthouse space.</i>
<u>Alternative 10 (ZC)</u> <u>414.13</u>	<i>Increase the housing linkage requirement for a contribution to a housing trust fund to an amount equivalent to the assessed value of the penthouse area added (rather than ½ of this amount as in the current provision).</i>
<b>530</b> HEIGHT (SP)	Limit height of a penthouses on the roof of a one-family dwelling or flat to 10 feet; increase the height of a penthouse on other buildings and structures to 20 feet, consistent with recently adopted changes to The Height Act.
<u>Alternative 11 (ZC)</u> <u>530.5 (b)</u>	<i>Maintain 1:1 setback requirement for penthouses, but clarify that the setback would be required from any wall, except from the wall of a court not facing a public street; or from a wall along a lot line (generally a side lot line) where the building on the adjacent lot is or could by-right be taller than subject building.</i>
<u>Alternative 12 (ZC)</u> <u>530.5 (d)</u>	<i>Retain the current permitted height of 18’-6” for penthouses other than for a one family dwelling or flat, where it would be limited to 10’ in height.</i>
<u>Alternative 13 (ZC)</u> <u>530.5 (e)</u>	<i>Clarify that solar panels and wind turbines are included within the rule prohibiting mechanical equipment from extending above the permitted penthouse height.</i>
<b>630</b> HEIGHT OF BUILDINGS OR STRUCTURES (CR)	Limit height of a penthouse on the roof of a one-family dwelling or flat to 10 feet; increase the height of a penthouse on other buildings and structures to 20 feet, consistent with recently adopted changes to The Height Act of 1910.
<u>Alternative 14 (ZC)</u> <u>630.4 (b)</u>	<i>Maintain 1:1 setback requirement for penthouses, but clarify that the setback would be required from any wall, except from the wall of a court not facing a public street; or from a wall along a lot line (generally a side lot line) where the building on the adjacent lot is or could by-right be taller than subject building.</i>
<u>Alternative 15 (ZC)</u> <u>630.4 (d)</u>	<i>Retain the current permitted height of 18’-6” for penthouses other than for a one family dwelling or flat, where it would be limited to 10’ in height.</i>
<u>Alternative 16 (ZC)</u> <u>630.4 (e)</u>	<i>Clarify that solar panels and wind turbines are included within the rule prohibiting mechanical equipment from extending above the permitted penthouse height.</i>

<b>Section</b>	<b>Summary Amendment</b>
<b>770</b> HEIGHT OF BUILDINGS OR STRUCTURES (C)	Limit height of a penthouse on the roof of a one-family dwelling or flat to 10 feet; increase the height of a penthouse on other buildings and structures to 20 feet, consistent with recently adopted changes to The Height Act.
<i>Alternative 17 (ZC)</i> 770.3 (b)	<i>Maintain 1:1 setback requirement for penthouses, but clarify that the setback would be required from any wall, except from the wall of a court not facing a public street; or from a wall along a lot line (generally a side lot line) where the building on the adjacent lot is or could by-right be taller than subject building.</i>
<i>Alternative 18 (ZC)</i> 770.3 (e)	<i>Retain the current permitted height of 18'-6" for penthouses other than for a one family dwelling or flat, where it would be limited to 10' in height.</i>
<i>Alternative 19 (ZC)</i> 770.3 (f)	<i>Clarify that solar panels and wind turbines are included within the rule prohibiting mechanical equipment from extending above the permitted penthouse height.</i>
<b>840</b> HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)	Increase the height of a penthouse on buildings and structures to 20 feet, consistent with recently adopted changes to The Height Act.
<i>Alternative 20 (ZC)</i> 840.3 (b)	<i>Maintain 1:1 setback requirement for penthouses, but clarify that the setback would be required from any wall, except from the wall of a court not facing a public street; or from a wall along a lot line (generally a side lot line) where the building on the adjacent lot is or could by-right be taller than subject building.</i>
<i>Alternative 21 (ZC)</i> 840.3 (c)	<i>Retain the current permitted height of 18'-6" for penthouses.</i>
<i>Alternative 22 (ZC)</i> 840.3 (d)	<i>Clarify that solar panels and wind turbines are included within the rule prohibiting mechanical equipment from extending above the permitted penthouse height.</i>
<b>930</b> HEIGHT OF BUILDINGS OR STRUCTURES (W)	Limit height of a penthouse on the roof of a one-family dwelling or flat to 10 feet; increase the height of a penthouse on other buildings and structures to 20 feet, consistent with recently adopted changes to The Height Act.
<i>Alternative 23 (ZC)</i> 930.3 (b)	<i>Maintain 1:1 setback requirement for penthouses, but clarify that the setback would be required from any wall, except from the wall of a court not facing a public street; or from a wall along a lot line (generally a side lot line) where the building on the adjacent lot is or could by-right be taller than subject building.</i>
<i>Alternative 24 (ZC)</i> 930.3 (d)	<i>Retain the current permitted height of 18'-6" for penthouses other than for a one family dwelling or flat, where it would be limited to 10' in height.</i>
<i>Alternative 25 (ZC)</i> 840.3 (e)	<i>Clarify that solar panels and wind turbines are included within the rule prohibiting mechanical equipment from extending above the permitted penthouse height.</i>
<b>1203</b> HEIGHT, AREA, AND BULK REGULATIONS (CAP)	Retain the existing 1:1 setback and the 10' maximum height limit for a penthouse. Limit penthouses to one story.
<b>1563</b> HEIGHT, BULK, AND USE PROVISIONS (FT)	Retain the existing 80' height limit for buildings, including the penthouse. Limit penthouses to one story.
<b>1902</b> HEIGHT AND BULK (ARTS)	Retain the existing height limits for penthouses. Limit penthouses to one story.
<b>Chapter 26</b> INCLUSIONARY ZONING	Establish a requirement that area devoted partially or entirely to one or more dwelling units within a penthouse shall count towards the existing Inclusionary Zoning (IZ) set-aside requirement.
<i>Alternative 26 (ZC)</i> 2603.9	<i>Increase the IZ requirement for penthouse space by requiring a set-aside of one square foot of housing for low income (50% AMI) households for every square foot of habitable residential penthouse space.</i>

Section	Summary Amendment
Alternative 27 (ZC) 2603.10	Allow more flexibility for providing the IZ units offsite, to address the addition of penthouse residential GFA to an existing building.
<b>2906</b> ROOFTOP PENTHOUSES (USN)	Increase the height of a penthouse on buildings and structures to 20 feet, consistent with recently adopted changes to The Height Act.
Alternative 28 (ZC) 2906.2	Retain the current permitted height of 18'-6" for penthouses.
Alternative 28 (ZC) 2906.5	Clarify that solar panels and wind turbines are included within the rule prohibiting mechanical equipment from extending above the permitted penthouse height.
<b>3312</b> ROOF STRUCTURES (StE)	Amend terms, and clarify the applicability of § 400.7.

Public Comment is requested on the attached amendments to the Zoning Regulations and the alternatives. New text is shown in **bold underlined** type and text to be deleted is shown in **~~bold strikethrough~~** type. Where no alternative text was requested by the Zoning Commission, the Alternative Text column is left blank.

1. AMEND § 199, DEFINITIONS AS FOLLOWS:

	Proposed Text	Alternative Text
199.1	<b><u>NEW DEFINITION:</u></b> <b><u>Height Act - Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).</u></b>	
	<b><u>NEW DEFINITION:</u></b> <b><u>Penthouse – A structure on or above the roof of any part of a building. The terms includes all structures previously regulated as “roof structures” by § 411 prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] including roof decks and mechanical equipment.</u></b>	
	<b>Story</b> - the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured.  For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, <del>or stairway or elevator</del> penthouses, <del>or other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area.</del>	
	<b>Story, top</b> - the uppermost portion of any building or structure that is used for purposes other than <del>housing for mechanical equipment or stairway or elevator</del> penthouses. The term "top story" shall exclude architectural embellishment.	

Replace, wherever it occurs throughout the Zoning Code, the term “roof structure” with “penthouse”.

Replace, wherever it occurs throughout the Zoning Code, any long version of the title of the Height Act of 1910 with “The Height Act”.

2. *AMEND CHAPTER 4 RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, § 400 HEIGHT OF BUILDINGS OR STRUCTURES (R) AS FOLLOWS:*

	Proposed Text	Alternative Text
	<b>CHAPTER 4 - RESIDENTIAL</b>	<b>CHAPTER 4 - RESIDENTIAL</b>
400.7	If <del>housing for mechanical equipment or a stairway or elevator</del> a penthouse is provided <del>on the roof of a building or structure</del> , it shall be erected or enlarged as follows:	
(a)	It shall meet the requirements of § 411;	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;	<u>It shall provide a setback greater than or equal to its height above the roof on which it is situated, from:</u> <u>(1) Any wall facing a public street;</u> <u>(2) Any wall facing a public alley;</u> <u>(3) Any wall facing a court open to a public street;</u> <u>(4) Any wall that provides a setback from a lot line that it faces; or</u> <u>(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property’s existing or matter-of-right height.</u>
(c)	<u>For one- family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	
(d)	<u>For all other buildings and structures, it shall not exceed <del>eighteen feet</del> twenty feet (20 ft.), <del>six inches (18 ft., 6 in.)</del>, in height above the roof upon which it is located; and</u>	<u>For all other buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located; and</u>
(e)	<u>For all buildings and structures, mechanical equipment shall not extend above the <del>permitted eighteen foot, six inch (18 ft., 6 in.)</del> maximum permitted height of the housing, as specified in paragraphs (c) and (d) above.</u>	<u>For all buildings and structures, no mechanical equipment, including solar panels or wind turbines, shall not extend above the maximum permitted height of the penthouse housing, as specified in paragraphs (c) and (d) above.</u>
400.8	<del>Housing for mechanical equipment, a stairway, or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.</del>	

3. *AMEND CHAPTER 4 RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, § 411 ROOF STRUCTURES AS FOLLOWS:*

	Proposed Text	Alternative Text
411	<b>ROOF STRUCTURES (R) PENTHOUSES</b>	
411.1	<u>A penthouse as defined in § 199.1 shall be subject to the conditions specified in this section regardless of the zone district in which the structure is located.</u> <del>To exercise a reasonable degree of architectural control upon roof structures in all districts, housing</del>	

	Proposed Text	Alternative Text
	<del>for mechanical equipment, stairway and elevator penthouses, and, when not in conflict with An Act To Regulate the Height of Buildings in the District of Columbia, approved June 10, 1920 (36 Stat. 452; D.C. Official Code, §§ 6-601.01 to 6-601.09, on apartment building roofs, penthouses for (a) storage, showers, and lavatories incidental and accessory to roof swimming pools or communal recreation space located on that roof; and (b) other enclosed areas, within the area permitted as a roof structure, used for recreational uses accessory to communal rooftop recreation space, shall be subject to conditions and variable floor area ratio credit specified in this section.</del>	
<u>411.2</u>	<u>New provision:</u> <u>A penthouse may be used to house mechanical equipment, stairway and elevator overrides, or any use permitted within the zone in which the penthouse is located; except that a penthouse located within the R-1 through R-4 zones, or any one-family dwelling or flat in any other zone may only be used to house mechanical equipment, stairway and elevator overrides, or ancillary space directly associated with a rooftop deck.</u>	<u>A penthouse may be used to house mechanical equipment, stairway and elevator overrides, or any use permitted within the zone in which the penthouse is located; except that a penthouse located within the R-1 through R-4 zones, or any one-family dwelling or flat in any other zone may only be used to house mechanical equipment, stairway and elevator overrides, or storage space directly associated with a rooftop deck.</u>
411.3	When located below, at the same roof level with, or above the top story of any building or structure, penthouses <del>(as outlined in § 411.1)</del> shall be subject to the provisions of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3 when applicable, and to the conditions <del>and variable floor area ratio</del> specified in this section.	
411.4	All penthouses <del>and mechanical equipment</del> shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color.	
411.5	When roof levels vary by one (1) floor or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.	
411.6	<del>Deleted—Enclosing walls from roof level shall be of equal height, and shall rise vertically to a roof, except as provided in § 411.6.</del>	<u>Except as provided in § 411.7, walls of an enclosed penthouse shall be of equal height above roof level, and shall rise vertically to a roof. Screening walls for any mechanical equipment that is not contained within a penthouse shall be of a uniform height not greater than the maximum permitted height for a penthouse, but need not be the same height as any enclosed penthouse on the same roof.</u>
411.7	<del>When</del> <u>A penthouse</u> consisting solely of mechanical equipment, <del>the equipment</del> shall be enclosed fully as prescribed in §§ 411.4 <del>3</del> and 411.5, except that louvers may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls.	

	Proposed Text	Alternative Text
411.8	<del>Solely for the uses designated in this section, an increase of allowable floor area ratio of not more than thirty-seven hundredths (0.37) shall be permitted</del> <u>Gross floor area within a penthouse shall not be included in the calculation of a building's FAR.</u>	
411.9	<del>Roof structures shall not exceed one-third (1/3) of the total roof area for those districts where there is a limitation on the number of stories.</del> <u>A penthouse within the R-1 through R-4 zones, or on any one-family dwelling or flat in any other zone shall not exceed one-third (1/3) of the total roof area.</u>	
411.10	<del>Deleted</del> <del>In addition to the floor area ratio allowed by § 411.7, mechanical equipment owned and operated as a roof structure by a fixed right-of-way public mass transit system shall be permitted in addition to roof structures permitted in this section.</del>	
411.10	Repealed	
411.11	<del>Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.</del> <u>Except for the use restriction of § 411.2, the Board of Zoning Adjustment may grant exceptions under § 3104 from any of the requirements or limits of this section and of §§ 530.4, 630.4, 770.6, 840.3, or 930.3 upon a showing that:</u>	<u>Except for the use restriction of § 411.2, the Board of Zoning Adjustment may grant exceptions under § 3104 from any of the requirements or limits of this section and of §§ 530.4, 630.4, 770.6, 840.3, or 930.3 upon a showing that:</u> <u>(a) Operating difficulties such as meeting building code requirements for roof access and stairwell separation or elevator stack location to maximize efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;</u> <u>(b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and</u> <u>(c) The light and air of adjacent buildings will not be affected adversely.</u>
(a)	<u>Operating difficulties, size of building lot, or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;</u>	
(b)	<u>The intent and purpose of this chapter and this title will not be materially impaired by the structure; and</u>	
(c)	<u>The light and air of adjacent buildings will not be affected adversely.</u>	
411.12	<del>Deleted</del>	

	Proposed Text	Alternative Text
	<del>For purposes of this section, the rules of interpretation provided in §§ 411.13 through 411.17 shall be applicable.</del>	
411.13	<del>Deleted</del> <del>In computing the floor area ratio of a roof structure, the aggregate square footage of all levels or floors contained within a roof structure measuring six and one-half feet (6 1/2 ft.) or more in height shall be included in the total floor area ratio permitted.</del>	
411.14	<del>Deleted</del> <del>Areas within curtain walls without a roof used where needed to give the appearance of one (1) structure shall not be counted in floor area ratio, but shall be computed as a roof structure to determine if they comply with § 411.8.</del>	
411.15	<del>For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure.</del> Antenna equipment cabinets and antenna equipment shelters shall be regulated by chapter 27 of this title.	
411.16	For purposes of this section, skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, <u>safety railings required by the construction code</u> , and plumbing vent stacks shall not be considered as <del>roof structure penthouses</del> .	
411.17	<del>Roof structures</del> <u>Penthouses</u> less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.	
<u>411.18</u>	<u>A penthouse shall be limited to two (2) stories maximum, except that it shall be limited to one (1) story if:</u>	Do not include this section
<u>(a)</u>	<u>The penthouse is located on a building that is located within a R-1 through R-4 zone; or</u>	Do not include this section
<u>(b)</u>	<u>The penthouse is located on a one- family dwelling or flat in any zone; or</u>	Do not include this section
<u>(c)</u>	<u>Any portion of the height or volume of the penthouse is located above the height limit established by The Height Act for the site.</u>	Do not include this section
<u>411.19</u>	<u>There shall be no limitation on the amount of gross floor area that may be occupied by a penthouse, although penthouse residential GFA is subject to the Inclusionary Zoning set-aside provisions of Chapter 26 and the construction of penthouse non-residential GFA in excess of 1,000 square feet (1,000 sq.ft) triggers the affordable housing production requirement as set forth in § 414.</u>	
<u>411.20</u>	<u>A request to add penthouse space to a building approved by the Zoning Commission as a Planned Unit Development or through the design review requirements of Chapters 16, 18, 28, or 29 prior to</u>	

	Proposed Text	Alternative Text
	<u>(EFFECTIVE DATE OF THIS AMENDMENT) may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to Section 3030.</u>	

4. *AMEND CHAPTER 4 RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, BY ADDING A NEW § 414 AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE NON-RESIDENTIAL GROSS FLOOR AREA AS FOLLOWS:*

	Proposed Text	Alternative Text
<b><u>414</u></b>	<b><u>AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE NON-RESIDENTIAL GROSS FLOOR AREA.</u></b>	
<b><u>414.1</u></b>	<b><u>The owner of a building proposing to construct more than one thousand square feet (1,000 sq.ft.) of penthouse non-residential gross floor area shall produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low income households, as those households are defined by § 2601.1, in accordance with this section.</u></b>	
<b><u>414.2</u></b>	<b><u>For the purposes of this section, the term “penthouse non-residential gross floor area” shall mean all of the gross floor area of a penthouse not occupied by dwelling units; space accessory to rooftop deck space such as storage, rest rooms, or change rooms; mechanical equipment; stairway; or elevator overrides.</u></b>	<b><u>For the purposes of this section, the term “penthouse non-residential gross floor area” shall mean all of the gross floor area of a penthouse not occupied by dwelling units; recreation space accessible to all occupants of the building; space accessory to rooftop deck space such as storage, rest rooms, or change rooms; mechanical equipment; stairway; or elevator overrides.</u></b>
<b><u>414.3</u></b>	<b><u>The requirements of this section shall not apply to properties:</u></b>	The requirements of this section shall not apply to properties <del>:(a) Subject to the minimum residential use requirement of §§ 1706.4 through 1706.6; or (b)</del> owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.
<b><u>(a)</u></b>	<b><u>Subject to the minimum residential use requirement of §§ 1706.4 through 1706.6; or</u></b>	
<b><u>(b)</u></b>	<b><u>Owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.</u></b>	
<b><u>414.4</u></b>	<b><u>Qualifying residential uses include one-family dwellings, flats, multiple-family dwellings, including apartment houses, rooming houses, and boarding houses, but shall not include transient accommodations, all as defined in § 199.1.</u></b>	
<b><u>414.5</u></b>	<b><u>If the owner constructs or rehabilitates the required housing, the provisions of § 414.6 through 414.10 shall apply.</u></b>	

	Proposed Text	Alternative Text
<u>414.6</u>	<u>The gross square footage of new or rehabilitated housing shall equal:</u>	<u>The gross square footage of new or rehabilitated housing shall equal one square foot of density for low-income households for every one square foot of new penthouse non-residential gross floor area, other than as exempted in § 414.3.</u>
<u>(a)</u>	<u>Not less than one-fourth (1/4) of the proposed penthouse non-residential gross square area if the required housing is situated on an adjacent property;</u>	
<u>(b)</u>	<u>Not less than one-third (1/3) of the proposed penthouse non-residential gross square area if the location of the required housing does not comply with paragraph (a) of this subsection, but is nonetheless within the same Advisory Neighborhood Commission area as the property, or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan; and</u>	
<u>(c)</u>	<u>Not less than one-half (1/2) of the proposed penthouse non-residential gross square area if the location of the required housing is other than as approved in paragraphs (a) and (b) above.</u>	
<u>414.7</u>	<u>If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 sq.ft.); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing.</u>	
<u>414.8</u>	<u>For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR).</u>	
<u>414.9</u>	<u>In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one-family dwelling the effective date of the first lease agreement.</u>	
<u>414.10</u>	<u>If the required housing is provided for home ownership shall be the housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one-family dwelling the effective date of the first sales agreement.</u>	
<u>414.11</u>	<u>No certificate of occupancy shall be issued for the</u>	

	Proposed Text	Alternative Text
	<u>Owner's building to permit the occupancy of penthouse non-residential gross floor area until a certificate of occupancy has been issued for the housing required pursuant to this section.</u>	
<u>414.12</u>	<u>If the owner instead chooses to contribute funds to a housing trust fund, as defined in 2499.1, the provisions of § 414.13 through §414.16 shall apply.</u>	
<u>414.13</u>	<u>The contribution shall be equal to one-half (1/2) of the assessed value of the proposed penthouse non-residential gross floor area for office use</u>	<u>The contribution shall be equal to <del>one-half (1/2)</del> of the assessed value of the proposed penthouse non-residential gross floor area for office use.</u>
<u>414.14</u>	<u>The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue no earlier than thirty (30) days prior to the date of the building permit application to construct the penthouse non-residential gross floor area.</u>	
<u>414.15</u>	<u>The contribution shall be determined by dividing the assessed value per square foot of land that comprises the lot upon which the building is or will be located by the maximum permitted non-residential FAR and multiplying that amount times the penthouse non-residential gross square feet to be constructed.</u>	
<u>414.16</u>	<u>Not less than one-half (1/2) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the penthouse non-residential gross floor area, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any or all of the building's penthouse non-residential gross floor area.</u>	

5. *AMEND CHAPTER 5 SPECIAL PURPOSE DISTRICTS, SECTION 530 HEIGHT AS FOLLOWS:*

	Proposed Text	Alternative Text
530.4	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses <del>over</del> <b>elevator shafts</b> , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
530.5	<del>If housing for mechanical equipment or a stairway or elevator a</del> penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	
(a)	It shall meet the requirements of § 411;	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; <u>and</u>	<u>It shall provide a setback greater than or equal to its height above the roof on which it is situated, from:</u> <u>(1) Any wall facing a public street;</u>

	Proposed Text	Alternative Text
		<p><u>(2) Any wall facing a public alley;</u></p> <p><u>(3) Any wall facing a court open to a public street;</u></p> <p><u>(4) Any wall that provides a setback from a lot line that it faces; or</u></p> <p><u>(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height.</u></p>
<u>(c)</u>	<u>For one- family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	
<u>(d)</u>	<del>It</del> <u>For all other buildings and structures, it</u> shall not exceed <del>eighteen feet</del> <u>twenty feet (20 ft.), six inches (18 ft., 6 in.),</u> in height above the roof upon which it is located; <u>and</u>	<u>For all other buildings and structures,</u> it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located.
<u>(e)</u>	<u>For all buildings and structures,</u> mechanical equipment shall not extend above the <del>permitted eighteen foot, six inch (18 ft., 6 in.),</del> <u>maximum permitted</u> height of the housing, <u>as specified in paragraphs (c) and (d) above.</u>	<u>For all buildings and structures, no</u> mechanical equipment, <u>including solar panels or wind turbines,</u> shall <del>not</del> extend above the <u>maximum permitted</u> height of the <u>penthouse housing, as specified in paragraphs (c) and (d) above.</u>
530.6	<del>Deleted</del> <del>Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.</del>	
530.7	Where required by <del>the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. &amp; 1999 Supp.))</del> , <u>the Height Act,</u> a height in excess of that permitted shall be authorized by the Mayor.	

6. *AMEND CHAPTER 5 SPECIAL PURPOSE DISTRICTS, § 537 ROOF STRUCTURES AS FOLLOWS:*

	Proposed Text	Alternative Text
<b>537</b>	<b><u>ROOF STRUCTURES PENTHOUSES (SP)</u></b>	
537.1	The provisions of § 411 shall also regulate <del>roof structures</del> <u>penthouses</u> in SP Districts.	
537.2	The gross floor area of <del>roof structures</del> <u>penthouses</u> permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	

7. *AMEND CHAPTER 6 MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS, § 630 HEIGHT OF BUILDINGS OR STRUCTURES (CR) AS FOLLOWS:*

	Proposed Text	Alternative Text
630.3	Spires, towers, domes, pinnacles or minarets serving	

	Proposed Text	Alternative Text
	as architectural embellishments, penthouses <del>over</del> <del>elevator shafts</del> , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
630.4	<del>If housing for mechanical equipment or a stairway</del> <del>or elevator</del> a penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	
(a)	It shall meet the requirements of § 411;	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; <del>and</del>	<u>It shall provide a setback greater than or equal to its height above the roof on which it is situated, from:</u> <u>(1) Any wall facing a public street;</u> <u>(2) Any wall facing a public alley;</u> <u>(3) Any wall facing a court open to a public street;</u> <u>(4) Any wall that provides a setback from a lot line that it faces; or</u> <u>(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height;</u>
(c)	<u>For one-family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	
(d)	<u>For all other buildings and structures, it</u> shall not exceed <del>eighteen feet</del> <u>twenty feet (20 ft.)</u> , <del>six</del> <del>inches (18 ft., 6 in.)</del> , in height above the roof upon which it is located; <del>and</del>	<u>For all other buildings and structures, it</u> shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located; <del>and</del>
(e)	<u>For all buildings and structures,</u> mechanical equipment shall not extend above the <del>permitted</del> <del>eighteen foot, six inch (18 ft., 6 in.)</del> , <u>maximum</u> <u>permitted</u> height of the housing, <u>as specified in</u> <u>paragraphs (c) and (d) above.</u>	<u>For all buildings and structures, no</u> mechanical equipment, <u>including solar</u> <u>panels or wind turbines,</u> shall <del>not</del> extend above the <u>maximum permitted</u> height of the <u>penthouse housing, as specified in</u> <u>paragraphs (c) and (d) above.</u>
630.5	<del>Housing for mechanical equipment or a stairway</del> <del>or elevator penthouse may be erected to a height</del> <del>in excess of that authorized in the district in which</del> <del>located.</del>	

8. *AMEND CHAPTER 7 COMMERCIAL DISTRICTS, § 770 HEIGHT OF BUILDINGS OR STRUCTURES (C) AS FOLLOWS:*

	Proposed Text	Alternative Text
770	HEIGHT OF BUILDINGS OR STRUCTURES (C)	
770.3	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses <del>over</del> <del>elevator shafts</del> , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may	

	Proposed Text	Alternative Text
	be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
770.6	<del>If housing for mechanical equipment or a stairway or elevator</del> a penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	
(a)	It shall meet the requirements of § 411;	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;	<p><b><u>It shall provide a setback greater than or equal to its height above the roof on which it is situated, from:</u></b></p> <p><b><u>(1) Any wall facing a public street;</u></b></p> <p><b><u>(2) Any wall facing a public alley;</u></b></p> <p><b><u>(3) Any wall facing a court open to a public street;</u></b></p> <p><b><u>(4) Any wall that provides a setback from a lot line that it faces; or</u></b></p> <p><b><u>(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height.</u></b></p>
(c)	In the C-5 (PAD) District, it shall be set back from that portion of the perimeter of the roof fronting on a street a minimum distance equal to twice the height of the <del>roof structure</del> <b>penthouse</b> above the roof upon which it is located; and	
<b><u>(d)</u></b>	<b><u>For one-family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u></b>	
<b><u>(e)</u></b>	<b><u>For all other buildings and structures, it shall not exceed <del>eighteen feet</del> twenty feet (20 ft.), six inches (18 ft., 6 in.), in height above the roof upon which it is located; and</u></b>	<b><u>For all other buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located; and</u></b>
<b><u>(f)</u></b>	<b><u>For all buildings and structures, mechanical equipment shall not extend above the <del>permitted eighteen foot, six inch (18 ft., 6 in.)</del> maximum permitted height of the housing, as specified in paragraphs (d) and (e) above.</u></b>	<b><u>For all buildings and structures, no mechanical equipment, including solar panels or wind turbines, shall <del>not</del> extend above the maximum permitted height of the penthouse housing, as specified in paragraphs (d) and (e) above.</u></b>
770.8	Where required by <del>the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. &amp; 1999 Supp.)))</del> <b>The Height Act</b> , a height in excess of that permitted shall be authorized by the Mayor.	
770.9	The height permitted for a building eligible for the additional density permitted pursuant to § 771.4 shall be that permitted by <del>the Act to Regulate the Height of Buildings in the District of Columbia, approved</del>	

	Proposed Text	Alternative Text
	<del>June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09) The Height Act.</del>	

9. *AMEND CHAPTER 7 COMMERCIAL DISTRICTS, § 777 ROOF STRUCTURES (C) AS FOLLOWS:*

	Proposed Text	Alternative Text
<b>777</b>	<b><del>ROOF STRUCTURES</del> PENTHOUSES (C)</b>	
777.1	The provisions of § 411 shall also regulate <del>roof structures</del> <u>penthouses</u> in the Commercial Districts.	
777.2	The gross floor area of <del>roof structures-penthouses</del> permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	

10. *AMEND CHAPTER 8 INDUSTRIAL DISTRICTS, § 840 HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M) AS FOLLOWS:*

	Proposed Text	Alternative Text
<b>840</b>	<b>HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)</b>	
840.2	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
840.3	<del>If housing for mechanical equipment or a stairway or elevator</del> <u>a penthouse</u> is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	
(a)	It shall meet the requirements of § 411;	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; <del>and</del>	<p><b><u>It shall provide a setback greater than or equal to its height above the roof on which it is situated, from:</u></b></p> <p><b><u>(1) Any wall facing a public street;</u></b></p> <p><b><u>(2) Any wall facing a public alley;</u></b></p> <p><b><u>(3) Any wall facing a court open to a public street;</u></b></p> <p><b><u>(4) Any wall that provides a setback from a lot line that it faces; or</u></b></p> <p><b><u>(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height;</u></b></p>
(c)	<p><b><u>For all buildings and structures, it shall not exceed eighteen twenty feet (20 ft.) in height above the roof upon which it is located; and</u></b></p> <p><del><b><u>It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six</u></b></del></p>	<p><b><u>For all buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located.</u></b></p>

	Proposed Text	Alternative Text
	<del>inch (18 ft., 6 in.), height of the housing.</del>	
(d)	<u>For all buildings and structures, mechanical equipment shall not extend above the <del>permitted eighteen foot, six inch (18 ft., 6 in.), maximum permitted</del> height of the housing, as specified in paragraph (c) above.</u>	<u>For all buildings and structures, no mechanical equipment, including solar panels or wind turbines, shall not extend above the maximum permitted height of the penthouse housing, as specified in paragraph (c) above.</u>
840.4	<del>Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the District in which it is located.</del>	
840.5	Where required by <del>the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. &amp; 1999 Supp.))), The Height Act,</del> a height in excess of that permitted in that Act shall be authorized by the Council of the District of Columbia.	

11. AMEND CHAPTER 8 INDUSTRIAL DISTRICTS, § 845 ROOF STRUCTURES (C-M, M) AS FOLLOWS:

	Proposed Text	Alternative Text
845	<b><u>ROOF STRUCTURES PENTHOUSES</u></b> (C-M, M)	
845.1	Section 411 shall be applicable to <del>roof structures</del> <b><u>penthouses</u></b> in the Industrial Districts.	
845.2	The gross floor area of <del>roof structures</del> <b><u>penthouses</u></b> permitted under § 411 shall not be counted in determining the amount of off-street parking required elsewhere in this title.	

12. AMEND CHAPTER 9 WATERFRONT DISTRICTS, § 930 HEIGHT OF BUILDINGS OR STRUCTURES (W) AS FOLLOWS:

	Proposed Text	Alternative Text
930.2	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses <del>over elevator shafts</del> , ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews or mayoral approvals.	
930.3	<del>If housing for mechanical equipment or a stairway or elevator a</del> penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	
(a)	It shall meet the requirements of § 411;	
(b)	It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; <del>and</del>	<u>It shall provide a setback greater than or equal to its height above the roof on which it is situated, from:</u>

	Proposed Text	Alternative Text
		<p><u>(1) Any wall facing a public street;</u></p> <p><u>(2) Any wall facing a public alley;</u></p> <p><u>(3) Any wall facing a court open to a public street;</u></p> <p><u>(4) Any wall that provides a setback from a lot line that it faces; or</u></p> <p><u>(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height;</u></p>
(c)	<u>For one-family dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;</u>	
(d)	<u>For all other buildings and structures, it shall not exceed <del>eighteen feet</del> twenty feet (20 ft.), six inches (18 ft., 6 in.), in height above the roof upon which it is located; and</u>	<u>For all other buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.) in height above the roof upon which it is located; and</u>
(e)	<u>For all buildings and structures, mechanical equipment shall not extend above the <del>permitted</del> eighteen foot, six inch (18 ft., 6 in.), maximum permitted height of the housing, as specified in paragraphs (c) and (d) above.</u>	<u>For all buildings and structures, no mechanical equipment, including solar panels or wind turbines, shall <del>not</del> extend above the maximum permitted height of the penthouse housing, as specified in paragraphs (c) and (d) above.</u>
930.4	<u>Deleted</u> <del>Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.</del>	
930.5	<del>Roof structures</del> Penthouses less than ten (10) feet in height above a roof or parapet wall of a structure in the W-0 District on Kingman Island shall not be subject to the requirements of this section when the top of the <del>roof structure penthouse</del> is below maximum building height prescribed for the W-0 District.	

13. AMEND CHAPTER 9 WATERFRONT DISTRICTS, § 936 ROOF STRUCTURES (W) AS FOLLOWS:

	Proposed Text	Alternative Text
936	<b><u>ROOF STRUCTURES PENTHOUSES (W)</u></b>	
936.1	The provisions of § 411 shall apply to <del>roof structure</del> <b><u>penthouses</u></b> in the Waterfront Districts.	
936.2	The gross floor area of <del>roof structure penthouses</del> permitted under this section shall not be counted in determining the required number of off-street parking spaces or loading berths as specified elsewhere in this title.	

**14. AMEND CHAPTER 12 CAPITOL INTEREST OVERLAY DISTRICT, § 1203 HEIGHT, AREA, AND BULK REGULATIONS AS FOLLOWS:**

	<b>Proposed Text</b>	<b>Alternative Text</b>
1203.1	Except as specified in § 1203.2 and in chapters 20 through 25 of this title, the height of buildings or structures in the CAP Overlay District shall not exceed forty feet (40 ft.) or three (3) stories in height.	
1203.2	The height of buildings or structures as specified in § 1203.1 may be exceeded in the following instances:	
(a)	A spire, tower, dome, minaret, pinnacle, or penthouse <del>over elevator shaft</del> may be erected to a height in excess of that authorized in § 1203.1; and	
(b)	If erected or enlarged as provided in § 411, <del>housing for mechanical equipment or a stairway or elevator</del> penthouse may be erected to a height in excess of that authorized in the zone district in which located; provided that: (1) <del>the housing</del> <u>It</u> is set back from all lot lines of the lot upon which the structure is located a distance equal to its height above the roof of the top story; <u>and</u> (2) <del>In any case, a roof structure-</del> <u>It</u> shall not exceed ten feet (10 ft.) <u>and one story</u> in height above the roof upon which it is located.	
1203.4	<del>All provisions of § 411 shall also apply to roof structures in the CAP Overlay District.</del> The gross floor area of <del>roof structure</del> <u>penthouses</u> permitted under this subsection shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	

**15. AMEND CHAPTER 15 MISCELLANEOUS OVERLAY DISTRICTS, FT TOTTEN OVERLAY § 1562 HEIGHT, BULK, AND USE PROVISIONS (FT) AS FOLLOWS:**

	<b>Proposed Text</b>	<b>Alternative Text</b>
1563.4	The maximum height and bulk of a new building for a newly established use in the underlying CR District shall be eighty-feet (80 ft.) in height, inclusive of <u>penthouse which shall be limited to one story</u> <del>roof structure</del> , and 5.0 floor area ratio.	
1563.5	Buildings proposed to have a height in excess of sixty-five feet (65 ft.) shall provide special architectural features, roof parapet detailing, and design consideration of <del>roof top and</del> penthouses <del>structures</del> to ensure that the views and vistas from the historic fortification of Fort Totten are not degraded or obstructed. The D.C. Office of Planning shall review and provide a report with recommendation.	

**16. AMEND CHAPTER 19 UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, § 1902 HEIGHT AND BULK AS FOLLOWS:**

	<b>Proposed Text</b>	<b>Alternative Text</b>
1902.1	In the underlying C-3-A District, a building may be	

**Z.C. NOTICE OF PUBLIC HEARING****Z.C. CASE NO. 14-13****PAGE 20**

	<b>Proposed Text</b>	<b>Alternative Text</b>
	constructed in excess of the height limit of sixty-five feet (65 ft.), up to a maximum height of seventy-five feet (75 ft.); provided:	
(a)	No <del>roof structure</del> <b>penthouse</b> permitted by this title shall exceed a height of eighty-three and one-half feet (83 1/2 ft.) above the measuring point used for the building, <b>or exceed one story</b> ; and	

**17. AMEND CHAPTER 26 INCLUSIONARY ZONING, § 2601 DEFINITIONS AS FOLLOWS:**

	<b>Proposed Text</b>	<b>Alternative Text</b>
2601.1	Unchanged	<p><b><u>Designated area – Any one of the following areas:</u></b></p> <p><b><u>(1) The Downtown Development or Southeast Federal Center Overlay Districts;</u></b></p> <p><b><u>(2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;</u></b></p> <p><b><u>(3) The W-2 zoned portions of the Georgetown Historic District;</u></b></p> <p><b><u>(4) The R-3 zoned portions of the Anacostia Historic District;</u></b></p> <p><b><u>(5) The C-2-A zoned portion of the Naval Observatory Precinct District; and</u></b></p> <p><b><u>(6) The Eighth Street Overlay.</u></b></p>

**18. AMEND CHAPTER 26 INCLUSIONARY ZONING, § 2602 APPLICABILITY AS FOLLOWS:**

	<b>Proposed Text</b>	<b>Alternative Text</b>
2602.1	Except as provided in § 2602.3, the requirements and incentives of this Chapter shall apply to developments that:	
(a)	Are mapped within the R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, and W-1 through W-3 Zone Districts, <del>unless exempted pursuant to § 2602.3;</del>	
(b)	Have ten (10) or more dwelling units (including off-site inclusionary units; <b>and</b>	
(c)	Are either:	
(1)	New multiple-dwellings;	
(2)	New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or	
(3)	An existing development described in subparagraph (a) or (b) for which: <p><b><u>(A)</u></b> A new addition will increase the gross floor area of the entire development by fifty percent (50%) or more; <b>or</b></p>	

	Proposed Text	Alternative Text
	<b><u>(B) Any existing building, including one described in subparagraph (3)(A) above, that includes a penthouse with gross floor area devoted to residential uses.</u></b>	
2602.3	This Chapter shall not apply to:	
(a)	Hotels, motels, inns, or dormitories;	
(b)	Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;	
(c)	Housing that is owned or leased by foreign missions exclusively for diplomatic staff;	
(d)	Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments; <b>and</b>	
(e)	Properties located in any of the following areas:	<b>Properties located in any of the following areas:</b>
(1)	The Downtown Development or Southeast Federal Center Overlay Districts;	<b><del>The Downtown Development or Southeast Federal Center Overlay Districts;</del></b>
(2)	The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;	<b><del>The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;</del></b>
(3)	The W-2 zoned portions of the Georgetown Historic District;	<b><del>The W-2 zoned portions of the Georgetown Historic District;</del></b>
(4)	The R-3 zoned portions of the Anacostia Historic District; <b>and</b>	<b><del>The R-3 zoned portions of the Anacostia Historic District; and</del></b>
(5)	The C-2-A zoned portion of the Naval Observatory Precinct District; <b>and</b>	<b><del>The C-2-A zoned portion of the Naval Observatory Precinct District.</del></b>
(6)	The Eighth Street Overlay.	<b><del>The Eighth Street Overlay.</del></b>

19. *AMEND CHAPTER 26 INCLUSIONARY ZONING, § 2603 SET-ASIDE REQUIREMENTS AS FOLLOWS:*

	Proposed Text	Alternative Text
2603.1	An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of the gross floor area being devoted to residential use <b><u>including floor area devoted partially or entirely to one or more dwelling units within a penthouse,</u></b> or 75% of the bonus density being utilized for inclusionary units.	<b><u>In addition to the set-aside requirement of § 2603.9 if applicable,</u></b> an inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of the gross floor area being devoted to residential use <b><u>exclusive of penthouse gross floor area,</u></b> or 75% of the bonus density being utilized for inclusionary units. <b><u>This requirement does not apply to a development located in a designated area, or to an existing building other than one described in § 2602.1 (c)(3)(A).</u></b>
2603.2	An inclusionary development of steel and concrete frame construction located in the zone districts stated	<b><u>In addition to the set-aside requirement of § 2603.9 if applicable,</u></b> an inclusionary

	Proposed Text	Alternative Text
	in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2 or W-3 District shall devote the greater of 8% of the gross floor area being devoted to residential use <b><u>including floor area devoted partially or entirely to one or more dwelling units within a penthouse,</u></b> or 50% of the bonus density being utilized for inclusionary units.	development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2 or W-3 District shall devote the greater of 8% of the gross floor area being devoted to residential use <b><u>exclusive of penthouse gross floor area, or fifty percent (50%)</u></b> of the bonus density being utilized for inclusionary units. <b><u>This requirement does not apply to a development located in a designated area, or to an existing building other than one described in § 2602.1 (c)(3)(A).</u></b>
2603.3	Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, StE, W-0, and W-1 Districts shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.	Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, StE, W-0 and W-1 Districts shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units <b><u>provided pursuant to § 2603.1 or 2603.2</u></b> for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.
2603.4	Developments located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Districts shall set aside 100% of inclusionary units for eligible moderate-income households.	Developments located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Districts shall set aside 100% of inclusionary units <b><u>provided pursuant to § 2603.1 or 2603.2</u></b> for eligible moderate-income households.
2603.5	The Mayor or the District of Columbia Housing Authority shall have the right to purchase up to twenty-five percent (25%) of inclusionary units <b><u>required by this Chapter</u></b> in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.	
2603.6	Notwithstanding § 2603.5, nothing shall prohibit the Mayor or the District of Columbia Housing Authority to acquire title to inclusionary units <b><u>required by this Chapter</u></b> in a for-sale inclusionary development if any of the following circumstances exist:	
(a)	There is a risk that title to the units will be transferred by foreclosure or deed-in-lieu of foreclosure, or that the units' mortgages will be assigned to the Secretary of the U.S. Department of Housing and Urban Development; or	
(b)	Title to the units has been transferred by foreclosure or deed-in-lieu of foreclosure, or the units' mortgages have been assigned to the Secretary of the U.S. Department of Housing and Urban Development.	
2603.6	An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an StE District shall devote no less than ten percent (10%) of the gross floor area being devoted to residential use for inclusionary units.	

	Proposed Text	Alternative Text
2603.7	An inclusionary development of steel and concrete frame construction located in an StE District shall devote no less than eight percent (8%) of the gross floor area being devoted to residential use in an StE District.	
<u>2603.8</u>		<u>Subsections 2603.9 and 2603.10 shall apply to all Inclusionary Developments applying for a building permit to construct new residential gross floor area located within a penthouse.</u>
<u>2603.9</u>		<u>An inclusionary development described in § 2603.8 shall devote one square foot of gross floor area for inclusionary units set-aside for eligible low-income households for every square foot of residential gross floor area contained in the building's penthouse.</u>
<u>2603.10</u>		<u>For new residential gross floor area located within a penthouse on an existing building, inclusionary units provided in accordance with § 2603 may be provided on-site; or may be provided off-site, subject to the requirements of § 2607.4 to 2607.8; and provided the off-site development meets the conditions of § 2607.2.</u>

20. *AMEND CHAPTER 26 INCLUSIONARY ZONING, § 2604 BONUS DENSITY AS FOLLOWS:*

	Proposed Text	Alternative Text
2604.1	Inclusionary developments subject to the provisions of this Chapter, except those located in the StE District, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by <u>The Height Act, the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, et seq. (2001 Ed.).</u>	Inclusionary developments subject to <del>the provisions of this Chapter § 2603.1 or 2603.2,</del> except those located in the StE District , may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by <u>The Height Act, the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, et seq. (2001 Ed.).</u>
2604.2	Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the bonus density: <i>(table unchanged)</i>	

21. *AMEND CHAPTER 26 INCLUSIONARY ZONING, § 2608 APPLICABILITY DATE AS FOLLOWS:*

	Proposed Text	Alternative Text
2608.2	The provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.	<u>With the exception of § 2603.8 through 2603.10,</u> the provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.

22. *AMEND CHAPTER 27 REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES, § 2707 EXEMPTED ANTENNAS AS FOLLOWS:*

	Proposed Text	Alternative Text
2707.1	The requirements of §§ 2703 through 2706 shall not apply to any antenna that is:	
(b)	Entirely enclosed on all sides by a <del>roof structure</del> , penthouse, or an extension of penthouse walls; this subsection shall not be interpreted to permit penthouses <del>or roof structures</del> in excess of the <u>permitted</u> height <u>above a roof</u> ; <del>limitations for roof structures</del> ;	

23. *AMEND CHAPTER 27 REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES, § 2715 EQUIPMENT CABINET OR SHELTER AS FOLLOWS:*

	Proposed Text	Alternative Text
2715.2	If an antenna equipment cabinet or shelter is provided on the roof of a building or structure, it shall be erected or enlarged subject to the following:	
(d)	It shall be placed only on a roof of a principal structure and may not be permitted on a roof of <del>any other roof structure or a</del> penthouse.	

24. *AMEND CHAPTER 29 UNION STATION NORTH (USN) DISTRICT, § 2906 ROOFTOP PENTHOUSES AS FOLLOWS:*

	Proposed Text	Alternative Text
<b>2906</b>	<b>ROOFTOP PENTHOUSES</b>	
2906.1	Rooftop penthouses <del>not intended for human occupation, such as penthouses over mechanical equipment, a stairway, or an elevator shaft</del> shall be erected or enlarged pursuant to § 770.6 through 770.8.	
2906.2	<u>For all buildings and structures, it shall not exceed twenty feet (20 ft.) in height above the roof upon which it is located.</u> <del>Such a penthouse shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.</del>	<u>For all buildings and structures, it shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located.</u>
2906.3	A penthouse <del>not intended for human occupancy</del> may be erected to a height in excess of that authorized in the USN District subject to the provisions of the Height Act.	
2906.4	Spires, towers, domes, pinnacles, or minarets serving as architectural embellishments, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes.	
<b>2906.5</b>	<u>For all buildings and structures, mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), maximum permitted height of the housing, as specified in § 2906.2 above.</u>	<u>For all buildings and structures, no mechanical equipment, including solar panels or wind turbines, shall not extend above the maximum permitted height of the penthouse housing, as specified in § 2906.2 above.</u>

25. *AMEND CHAPTER 33 SAINT ELIZABETHS EAST CAMPUS (StE) DISTRICT, SECTION 3312  
ROOF STRUCTURE AS FOLLOWS:*

	Proposed Text	Alternative Text
3312	<b><u>ROOF STRUCTURE PENTHOUSES</u></b>	
3312.1	<del><b>Rooftop-A</b></del> penthouse <del><b>not intended for human occupation, such as penthouses over mechanical equipment, a stairway or an elevator shaft</b></del> shall be erected or enlarged pursuant to <b><u>§§ 400.7 and</u></b> 411 of this title.	

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 *et seq.*)

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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**ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND  
MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA,  
BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE  
ZONING COMMISSION.**