

MEMORANDUM

TO: Sara Bardin, Director, Office of Zoning
FROM:  Joel Lawson, Associate Director, Development Review
DATE: February 2, 2016
SUBJECT: **Zoning Commission Case No. 14-13, Penthouse Regulations.**

Request for Consent Calendar consideration of a technical correction to § 2607.9 of DCMR 11 Zoning Regulations, with a corresponding change to § 1006.10 of the revised Zoning Regulations, as recently approved through ZRR (ZC Case 08-06A)

The Office of Planning (OP) respectfully requests that the Commission consider making a technical correction to Zoning Commission Order No. 14-13 and that the matter be placed on the consent calendar pursuant to § 3030 of the Commission's rules. The correction would clarify changes to the affordable housing requirement for habitable penthouse space for a residential building, when the developer chooses to make a contribution to a housing trust fund rather than provide the affordable square footage on site, as permitted in the approved text.

As part of Zoning Commission Case 14-13, Penthouse regulations case, the Commission established affordable housing requirements for new, habitable space within a penthouse for both non-residential buildings and for residential buildings. The requirement for residential buildings was included within Chapter 26, Inclusionary Zoning. Typically, the required IZ units will be provided within the building, but there will be times, particularly for the addition of habitable space in a penthouse on an existing building, where this may not be practical. Accordingly, the Commission approved a provision allowing for a contribution to a housing production trust fund instead, with the method of calculation of the contribution based on that required for a non-residential building.

As the method of contribution calculation for residential building is the same as that for non-residential buildings, the approved language in the IZ (residential building) chapter references the method of calculation for non-residential buildings, located in Section 414 of the regulations. However, the Department of Consumer and Regulatory Affairs recently noted to OP that in the sections referenced in § 414, the calculation is based on maximum permitted *non-residential* FAR. For residential buildings, a clarification that the method of calculation is based on the maximum permitted *residential* FAR is needed. This will ensure clarity in the regulations, and consistency with the Zoning Commission intent for this provision.

Below is a draft of the amended text, with the addition of the phrase “**except that the calculation of § 414.15 shall be based on the maximum permitted residential FAR**”. Also included is the amended text in the newly adopted revised text, which will be effective on September 6, 2016, with the only difference being reference numbers.

PROPOSED CONSENT TEXT – CURRENT REGULATIONS:

Section 2607, OFF-SITE COMPLIANCE (IZ)

2607.9 Inclusionary Units resulting from the set-aside required for penthouse habitable space as described in § 2602.1(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of §§ 414.13 through 414.16, **except that the calculation of § 414.15 shall be based on the maximum permitted residential FAR**, when:

- (a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;
- (b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or
- (c) The building is not otherwise required to provide inclusionary units for low income households and the amount of penthouse habitable space would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.

PROPOSED CONSENT TEXT – NEWLY ADOPTED (ZRR) REGULATIONS:

Subtitle C § 1006, OFF-SITE COMPLIANCE (IZ)

1006.10 Inclusionary units resulting from the set-aside required for penthouse habitable space as described in Subtitle C § 1001.2(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of Subtitle C §§ 1505.13 through 1505.16, **except that the calculation of § 1505.15 shall be based on the maximum permitted residential FAR**, when:

- (a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;
- (b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or
- (c) The building is not otherwise required to provide inclusionary units for low income households and the amount of penthouse habitable space would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.