

MEMORANDUM

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

Request for Consent Calendar consideration of a technical corrections to Zoning Commission Order 14-13 pertaining to its amendments to §§ 2603.1 & 2603.2 of DCMR 11 Zoning Regulations

1. LATE FILING REQUEST

This Office of Planning report concerning Zoning Commission Case 14-13 (penthouse provisions) is being submitted less than 10 days prior to the Zoning Commission's Public Meeting. The Office of Planning respectfully requests that the Commission waive its rule and accept this report into the record.

2. OP RECOMMENDATION

DCRA has advised OP that, in some instances, developments in the permit review process are attempting to utilize a loophole in the text adopted in Zoning Commission Order No. 14-13 (the Order) as part of the recent penthouse regulations, to avoid providing the anticipated affordable housing requirement for residential penthouse space. In response, to this, the Office of Planning (OP) is proposing technical corrections to the Order consisting of two related minor revisions to amendments to the zoning regulations made in the Order, described and drafted below, to ensure that the affordable housing provision for habitable residential penthouse space would apply wherever habitable residential penthouse space is proposed, as intended by the Zoning Commission.

OP recommends that the Commission make this further technical correction to Zoning Commission Order No. 14-13, and respectfully requests that the matter be placed on the first available consent calendar pursuant to § 3030 of the Commission's rules. OP further recommends that the Zoning Commission authorize the publication of a Notice of Proposed Rulemaking, and a reduction in the normal comment period to fourteen days, to ensure that new text is consistent with the Commission's intent is adopted as soon as possible.¹

3. BACKGROUND AND ANALYSIS

As part of Zoning Commission Case 14-13, Penthouse regulations, the Zoning 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 penthouse space was included within the broader Chapter 26, Inclusionary Zoning (IZ) regulations, which establish that the provision of affordable housing can be based on one of two methods - either a percentage of the gross floor area of

¹ D.C. Official Code 2-509 (a) allow for a comment period of less than 30 days "upon good cause found."

the building, or a percentage of the bonus density gained through the IZ program, whichever would result in the greater amount of set aside..

However, a strict reading by DCRA of the adopted penthouse habitable residential space amendments have led to the interpretation that they would apply only to buildings which utilized the first of these two methods of calculation - when the builder chooses to apply the broader IZ requirement based on the total gross floor area of the building. Under this interpretation, the new affordable housing requirement for residential penthouse space would not apply when the builder is using the second method, based on the percentage of the IZ bonus area.

It was clearly the intent of the Zoning Commission to apply the affordable housing provision to all new residential buildings – the Commission specifically discussed the need to apply the penthouse related requirement more broadly and at a deeper level of affordability. While the intent of the Commission was clear, OP agrees with DCRA staff that the wording is not sufficiently clear to ensure the more universal applicability of the requirement as intended.

As such, with the support of DCRA, the following modifications to the relevant IZ provisions of Chapter 26 are proposed:

Chapter 26, Inclusionary Zoning (IZ)

2603.1: Except as provided in § 2603.8, 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 Zone District or in a C-1, C-2-A, W-0, or W-1 Zone District shall devote the greater of ten percent (10%) of the gross floor area being devoted to residential use including penthouse habitable space as described in § 2602.1(d), or seventy-five percent (75%) of the bonus density being utilized for inclusionary units **plus an area equal to ten percent (10%) of the penthouse habitable space as described in § 2602.1(d).**

2603.2: An inclusionary 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-B-1, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2, or W-3 Zone District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use including floor area devoted to penthouse habitable space as described in § 2602.1(d), or fifty percent (50%) of the bonus density being utilized for inclusionary units **plus an area equal to eight percent (8%) of the penthouse habitable space as described in § 2602.1(d).**

This new language would also be translated into corresponding sections of the newly adopted zoning text approved under Case 08-06A, ZR-16, also as a technical correction – specifically Subtitle C Chapter 10 Inclusionary Zoning §§ 1003.1 and 1003.2.