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September 25, 2015

VIA IZIS

Zoning Commission of the District of Columbia
441 4th Street, N.W.
Suite 210
Washington, DC 20001

Re: Comments on Z.C. Case No. 08-06
Comprehensive Zoning Regulations Rewrite (ZRR)

Dear Members of the Commission:

Holland & Knight LLP submits the following comments on Z.C. Case No. 08-06, Comprehensive Zoning Regulation Rewrite (ZRR). On December 11, 2014, the Zoning Commission took proposed action on ZRR, which was published in the DC Register on May 28, 2015. The comments contained below and attached are based upon these published provisions.

We are pleased to provide these comments and appreciate the efforts of the Zoning Commission, the Office of Planning, Office of Zoning, and the Office of the Attorney General in this multi-year endeavor. We support many of the concepts that have emerged from this process, including those which promote increased development in emerging areas of the city, accommodate modern perspectives on parking and transit ridership, and incorporate principles of environmental sustainability.

The comments that follow highlight some of the primary areas of ZRR that we believe require particular attention. In addition, attached hereto, is an expanded set of comments and specific recommendations on a number of ZRR subtitles.

Effective Date

Given the substantial departure ZRR will be both in content and in structure, it is important that the effective date ultimately established by the Zoning Commission factors in the needs of property owners to gain an understanding of the new regulations, and for the District Government to have adequate time to train officials and employee technicians on the application and interpretation of ZRR. In addition, considering the substantial number of projects that are well into site acquisition, planning and design, and structuring of financing, there is a need for the Zoning Commission to establish an effective date that protects the pre-permit investment(s) that have been made by property owners.

Setting an effective date that is close to the date the Zoning Commission adopts ZRR will require owners to restructure projects that have involved substantial investment in reliance upon the current regulations, and potentially cause considerable confusion and inefficiency for those that are responsible for applying, interpreting, and enforcing ZRR within the District government. Therefore, there needs to be sufficient time between final adoption and the effective date to allow property owners and District officials to become familiar with the new regulations, and for projects that are well into the planning and design process to complete the process without risk of losing existing development rights or getting caught in the middle.

Therefore, **we request the Zoning Commission establish an extended effective date of at least six months from the date that the final ZRR is published in the DC Register**. In the alternative, we recommend setting the effective date as the date when the new regulations are published in the DC Register but provide a ten month "opt-in" period that allows property owners to choose which version of the Zoning Regulations would apply to a project.

Retention of Existing Property Rights

As stated by the Office of Planning during the early stages of ZRR, while the effort to update the zoning regulations served many purposes, one of the underlying intents was to maintain all existing entitlements afforded under the 1958 Zoning Regulations. However, as described below, there are several areas within the proposed ZRR that are inconsistent with this and have the potential to cause substantial impacts to property owners that already invested significantly in a particular site or project. Therefore, we recommend that the following sections be revised based on the comments that are attached hereto: Inclusionary Zoning(IZ) (Subtitle C Chapter 10), Transferrable Development Rights (TDR) and Combined Lot Developments (CLD)(Subtitle I Chapters 8 and 9), and Planned Unit Developments (Subtitle X Chapter 10).

In addition, it appears that the proposed ZRR text would reduce the permitted non-residential density in the D-6 zone to 6.5 FAR, without credits (*see* Subtitle I Section 555.4). Currently, pursuant to 11 DCMR §§ 771.2 and 771.5, the permitted non-residential density for these properties is 8.5 FAR or 10.0 FAR depending upon street frontage. We recommend owners of these properties be afforded the same non-residential rights as they currently are entitled to by deleting Subtitle I Section 555.4, thereby allowing them to achieve the density permitted under Subtitle I Section 555.1

Definitions Related to Lot Lines and Rules of Measuring Required Yards / Setbacks

The collection of new definitions and rules for measurement related to lot lines, courts, and setbacks is substantially more complex than is necessary, and there appears to be no reason to move away from what currently exists. Furthermore, as demonstrated below regarding rear yard, some of these provisions are a vast departure from longstanding and well-established interpretations, and potentially could be difficult to apply universally in practice. Therefore, we recommend that the current definitions related to lot lines, rear and side yards, and courts be retained, as well as the existing rules for measuring required yards and courts.

The proposed definition and rules for measuring the required depth of rear yard support our recommendation for retaining what currently exists in the current regulations (11 DCMR 199.1, definition of "Yard, rear, depth of"). First, the proposed definition of "rear setback" is a reversal of the plain language of the existing definition and contrary to the intended purpose of having to provide a rear yard. Under the current regulations, the definition of rear yard depth is interpreted as being measured outward from the rear line of a building toward the rear lot line. There are several examples of this longstanding interpretation consistently being applied by the Board of Zoning Adjustment (BZA) and Zoning Administrator (*see* BZA Order No. 16696 and Appeal No. 17414), an interpretation that has been upheld in *Schonberger & Rebach v. BZA* (DC Court of Appeals No. 06-AA-1454). To change this longstanding practice now would result in significant administrative and enforcement issues to reconcile the two conflicting measurement methods.

Prohibition on Private Streets

The prohibition on private streets contained within the theoretical subdivision provisions of Subtitle C Section 305 should be eliminated as it is unnecessary and not relevant to any zoning issue. Currently in Section 2516.6(a), any area of land within a theoretical subdivision that forms a covenanted means of ingress or egress must be excluded from the area of any theoretical lot. Therefore, if the proposed restriction on private streets is intended to prevent property owners from including the area of private streets within certain area requirements, the current regulations already address this in a more practical manner. For example, under the current regulations the maintenance and liability of private streets with theoretical subdivisions is the responsibility of the property owner. The current proposal under ZRR gives raises the question of whether these responsibilities would now rest with the District Department of Transportation. Past precedent would suggest that while the street(s) may be dedicated public rights-of-way, and therefore removed from the tax rolls, it is possible the District will still require the property owner to assume the cost of maintenance. If such is the case, the proposal will only burden owners who would be required to forego ownership of property that is rightfully theirs while still having to carry the cost of maintenance.

Large Format Retail in Downtown Zones

As proposed, large format retail uses would only be permitted in Downtown Zones as a special exception pursuant to Subtitle I Section 303.1(d), subject to numerous conditions contained in Subtitle U Section 511.1(j).

The Central Washington Element of the Comprehensive Plan supports the continued establishment of large scale retail uses in the downtown core (Policy CW-2.1.1). The Comprehensive Plan also supports additional large format retail anchors that can support development of smaller scale local retail (Policy CW-2.1.3). These types of retail destinations can strengthen existing downtown retail nodes, and are the types of uses that can oftentimes help establish a neighborhood retail node. Therefore, these types of uses should not be required to obtain a special exception. Rather, they should be encouraged to locate in Central Washington as a matter-of-right.

Therefore, in support of the Comprehensive Pan policies we recommend that format retail uses be permitted to locate as a matter-of-right in the proposed D-4 – D-8 zones.

Height of Buildings

There are several sections within Subtitle I that establish the permitted building height as being 130 feet for buildings with frontage on a street that is 110 feet wide, and 110 feet for buildings with frontage on a street that is at least 90 feet wide. These include Sections 532.1, 540.1, 5481, 556.1, 563.1, and 577.1.

As currently stated, these provisions do not provide for a building height of 120 feet in instances where a building has frontage on a street with a right-of-way width of 100 feet, which is currently allowed and seen in parts of the existing DD Overlay. See § 1701.7 of Title 11.

We recommend that these sections be revised to provide that the maximum permitted height is 130 feet for a building with frontage on a street with a right-of-way width of 110 feet, and the permitted height is that which is permitted by the 1910 Height Act for any building with frontage on a street with a right-of-way width of less than 110 feet.

Updates Resulting from Recent / Potential Text Amendments

There are several text amendments that have been recently adopted, or are currently under consideration, that are not reflected in the proposed ZRR text that will need to be incorporated in the final adopted ZRR. These include the recently approved amendments to the R-4 regulations (Z.C. 14-11), the creation of the C-2-B-1 District (Z.C. 14-16), and the changes to animal boarding

(Z.C. 14-10). In addition, any updates to the penthouse regulations (Z.C. 14-13) and Inclusionary Zoning (Z.C. 04-33G) will need to be brought into ZRR at the conclusion of these cases.

Respectfully submitted,

HOLLAND & KNIGHT LLP

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HOLLAND & KNIGHT LLP

Z.C. Case No. 08-06A (ZRR)

Comments on Proposed Zoning Regulations

Published in DC Register May 28, 2015

Public Comment Period: May 28 – September 25, 2015

GENERAL COMMENTS

GENERAL	COMMENT(S)	RECOMMENDATION
	An updated cross walk should be included in the final adopted version of the ZRR either as an appendix or issued as a separate document.	
	Text amendments recently approved or under consideration regarding the R-4 regulations (Z.C. 14-11), animal boarding (Z.C. 14-10), creation of the C-2-B-1 zone (Z.C. 14-16), and penthouse regulations (Z.C. 14-13) will need to be added to the final version of the ZRR.	
	The collection of new definitions related to lot lines, courts, and setbacks is substantially more complex than is necessary and it is not clear what the need is for such a drastic deviation from what currently exists. In addition, it appears as currently proposed these new definitions and measurement requirements will be difficult to apply universally.	Retain current definitions related to lot lines, yards, and courtyards and provisions pertaining to measurement of required yards, setbacks, and courts.
	The proposed provisions related to the regulation of development on alley lots are more limiting than what currently exists.	Retain current alley lot regulations

SUBTITLE A: AUTHORITY AND APPLICABILITY

SUBTITLE A	COMMENT(S)	RECOMMENDATION
100.3	The effective date that is ultimately established by the Zoning Commission should take into consideration the needs of the property owners to gain an understanding of the new regulations, and for the District Government to have adequate time to train officials and technical employees on the application and interpretation of the new regulations. In addition, considering the substantial number of projects that are well into site acquisition, planning and design, and structuring financing, there is a need for the Zoning Commission to establish an effective date that protects the pre-permit investment(s) that have been made by property owners.	Establish an extended effective date of at least six months from the date of publishing of the notice of final rulemaking in the DC Register. In the alternative, set the effective date as the date which the new regulations are published in the DC Register and provide a ten month “opt-in” period.
102.3	The vesting provisions seem appropriate only if the Zoning Commission establishes an extended effective date that is, at a minimum, six months from the date of publishing of the ZRR to the DC Register. This would allow for adequate notice to property owners that intend to improve their property regarding what to expect, and provide time for applications that have been submitted based on the 1958 Zoning Regulations, and that involve prior investments based on the 1958 Zoning Regulations to clear, or get substantially through, the process prior to ZRR taking effect. BZA and Zoning Commission: Substantial effort and investment goes into preparing applications for BZA zoning relief and Zoning Commission design review, including meetings with the community, ANCs, assumptions for property acquisition and financing, etc.	The vesting date under Section 102.3(b) should be set to the date of the application rather than the date of the public hearing. The date associated with Large Tract Review (LTR) should be set to the effective date that is established by the Zoning Commission considering

SUBTITLE A	COMMENT(S)	RECOMMENDATION
102.3 (cont.)	Large Tract Review: The vesting date for Large Tract Review (LTR) should be modified considering the proposed ZRR was not published until May 2015. Since LTR is an administrative review and could entail matter-of-right projects, these developments should be allowed to vest under the regulations in place at the time the application is filed with DCOP. If a LTR development is not a matter-of-right project under the regulations in effective at the time of filing with the BZA or ZC, then it would be subject to the vesting provisions pertaining to BZA and ZC applications.	
211.2	The ability for agencies, upon mutual agreement of all agencies and by no fault of the applicant, to extend a referral period by an additional 40 days, for a total of 80 review days, will potentially cause substantial burden for an applicant that may have to have a hearing delayed.	A finite review period should be established so that agencies and applicants have the same expectations, and any decision to extend the established review period should have the benefit of applicant input.
301.5(a)	This list of permit types seems appropriate but the citations to the building code are inaccurate, seem unnecessary, and create the potential for inconsistencies when there are changes to the building code without a related change in the Zoning Regulations.	Remove the direct citations to the building code and leave the list of permit types.
301.5(c)(d) & (e)	The reference is to "paragraph (c)" is incorrect	Change reference to "paragraph (b)"
301.7	The date referred to in this provision should be set to the date the BZA application was filed or when the BZA voted on the application rather than the date the Order is "promulgated" since this is the date at which the BZA approves the application. The drafting of an order is a ministerial procedure. Depending upon the complexity of an application, considerable time could pass between the vote and the date which the order is "promulgated," or in other words "publicized." Applications that are authorized by orders of the Zoning Commission should also be included.	Modify provision to set vesting date for building permit applications authorized by orders of the BZA or Zoning Commission to the date the application is filed or when the vote was taken.

SUBTITLE A	COMMENT(S)	RECOMMENDATION
302.7(d)	This provision should be made consistent with Section 301.5(e), or vice versa.	Modify provision based on comment
302.9	The date referred to in this provision should be set to the date the BZA application was filed or when the BZA voted on the application rather than the date the Order is "promulgated" since this is the date at which the BZA approves the application. The drafting of an order is a ministerial procedure. Depending upon the complexity of an application, considerable time could pass between the vote and the date which the order is "promulgated," or in other words "publicized." Applications that are authorized by orders of the Zoning Commission should also be included.	Modify provision to set vesting date for building permit applications authorized by orders of the BZA or Zoning Commission to the date the application is filed or when the vote was taken.
302.11	The term "provisional certificate of occupancy" is not consistent with the building code which uses the term "conditional certification of occupancy."	Modify provision based on comment
303.2 & 303.3	These provisions should be revised to take into consideration conditions that have an extended time period to complete, or cannot, or are not required to be implemented prior to the issuance of a building permit or certificate of occupancy.	Modify provision based on comment

SUBTITLE A	COMMENT(S)	RECOMMENDATION
304.1(a) & 304.4(a)	With regard to lot occupancy, the Zoning Regulations should provide clarification as to whether the 2% flexibility that can be granted by the Zoning Administrator (ZA) is an additional two percent, or two percent of the permitted percent lot occupancy. For example, if 80% lot occupancy is permitted in a particular zone district, do the regulations allow the ZA to approve 82% lot occupancy, or does this provision mean the ZA can approve 81.6%, two percent of 80%.	Provide clarification based on comment
304.4	The Board of Zoning Adjustment should be taken out of this provision	Remove Board of Zoning Adjustment

SUBTITLE B: DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES

SUBTITLE B	COMMENT(S)	RECOMMENDATION
B-6	Art Incubator – according to this definition, a radio or television broadcast studio, which are considered media studios, would fall under art incubator. An art incubator is permitted in a former public school in a residential zone. This permission then flows to less restrictive zones. It is not clear whether an art incubator, or specifically a radio or television broadcast studio, must be in a former public school when located in a non-residential zone such as an MU zone.	Provide necessary clarification to state under what conditions, if any, an art incubator can locate in a non-residential zone.
B-8	Block face – It is not clear whether this term is intended to refer to the actual building facades along the section of a street, which could vary, or simply the section of a street between two intersections. It would seem the latter is more appropriate given how this term is used.	Modify the definition to clarify whether it is referring to a street segment or the actual line of facades along a street segment. If the intention is a street segment, then change this term to “Block”
B-16	Gross Floor Area - the majority of the language added to the definition of gross floor area is similar to interpretations the Zoning Administrator now typically applies. However, the reference to “ground floor” should be eliminated as the reference to a cellar and a basement is sufficient. Similar to how the space above the floor of an atrium is not counted since there isn’t any floor space to count, elevator shafts and vent shafts and pipe chase shafts, regardless of what floor, should be treated similarly. In addition, ramps leading down to parking and loading areas regardless of where they are in relation to the ground floor should be excluded from GFA.	Remove elevator shafts from the list of things that are included in gross floor area. Add elevator shafts to the list of things that are not included in GFA. Remove the two references to “ground floor” in the list of things that are not included in GFA. Specifically, this includes removing the phrase “”on the ground floor” after ramps, and the phrase “above the ground floor” after pipe chase shafts.

SUBTITLE B	COMMENT(S)	RECOMMENDATION
B-17	Ground Floor - the definition of "Ground Floor" should be maintained as currently defined in 11 DCMR § 199. Specifically, the insertion of the phrase "and above" impacts the current interpretation of ground floor for those site in which there is a change in grade.	Revert to current definition of ground floor: Ground floor - the floor that is nearest in grade elevation to the adjacent surface of the public right-of-way.
B-27	Nonconforming Use - if a particular use is deemed not to be a nonconforming use then it should not be referred to as "That nonconforming use" in the second sentence of this definition.	Remove "nonconforming" from the second sentence so that it reads "The use shall be considered a conforming use, …"
B-30	Restaurant – the use of the term "prepared foods" should be avoided since that term is defined to mean food that is prepared by microwave, heating lamps, or toaster, on the premises of a prepared food shop and a restaurant is specifically defined as not being a prepared food shop.	Change "prepared food" to "food or meals"
B-32	Street Frontage – this definition should also clarify that when a lot abuts more than one street that the owner shall have the option to choose which is to be the front for purposes of measuring and applying required front, side, and rear yards.	
B-47	Retail – corner stores should be included in the list of uses that would fall under the retail use category. It is not clear why this use would be explicitly excluded from this category. A corner store is a use that contains "goods commonly sold to individuals in small quantities for their direct use."	Include corner stores in this use group
304	Both methodologies for measuring GFA should be consistent and use six (6) feet as the measurement distance.	Base both the perimeter method and grade-plane method of measuring GFA on a distance of 6 feet above finished grade or the point along the line for attached structures.

SUBTITLE B	COMMENT(S)	RECOMMENDATION
304.4(a)	This provision is unclear as to whether the measurement is taken to the underside of the floor joists or floor slab, surface of the ground floor, or some other point? The measurement needs to be changed to 6 feet to be consistent with 304.5(b).	Remove "ground floor," provide the necessary clarification regarding where the measurement is taken to, and make change to measurement requirement to reflect 6 feet. Revise to read: "(a) Measure the portions of the perimeter of the story located partially below finished grade that have a height greater than or equal to **six (6**) feet, when measured between the finished grade and ~~the ground floor of~~ the story above;
304.5(b)	The provision should be clarified to indicate the point to which the measurement is taken. Is it to the underside of the floor joists or floor slab, surface of the ground floor, or some other point?	Remove "ground floor," provide the necessary clarification regarding where the measurement is taken to, and make change to measurement requirement to reflect 6 feet. Revise to read: "(b) Determine the portion of this line where the distance between it, and ~~the ground floor of~~ the story directly above, is greater than or equal to six (6) feet;
307.4	The term "natural grade" should be changed to "finished grade" to be consistent with Section 307.2, and to account for typical site grading that is required during construction.	Change "natural grade" to "finished grade"
309.1	The wording of this provision precludes construction of a flat where the dwelling units are side-by-side, with separate entrances from the street (aka duplex) in a zone where a flat is permitted by-right without having to get a variance to allow multiple buildings on a single lot. Also, the requirement of Section 309(d)(2) for a connection to be a "space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway" is not feasible in a typical mixed use building where different tenants may control access using contemporary security systems and protocols such as with key fobs and scan cards.	Delete the first sentence of this provision and Section 309(d)(2) .

SUBTITLE B	COMMENT(S)	RECOMMENDATION
310.3	The restriction on mezzanines above the third story should be removed. If a building is able to comply with the maximum permitted height and number of stories then it shouldn't matter where the mezzanine is located within the building since it doesn't count as a story wouldn't increase the allowable height of the building.	Delete second sentence of this provision.
313 - 324	See general comment above regarding retention of existing regulations pertaining to the definition and methods for measuring side yards, rear yards, and courtyards.	Retain current definitions related to lot lines, yards, and courtyards and provisions pertaining to measurement of required yards, setbacks, and courts.
319.3(a)	Requiring the measurement for rear setback / yard to be taken from the rear lot line into the lot is a reversal of current interpretation which is to measure from the rear line of the building outward toward the rear lot line. This interpretation has been consistently used by the BZA and the Zoning Administrator, and was upheld in *Schonberger & Rebach v. BZA* (DC Court of Appeals No. 06-AA-1454).	Retain current interpretation regarding measurement of rear yard
B-66	Table §317.4(d) – The description of the second and third width allowances for single projections, and the third allowance under multiple projections, is not clear.	Provide necessary clarification

SUBTITLE C: GENERAL RULES

SUBTITLE C	COMMENT(S)	RECOMMENDATION
305.1	Reference to §302.1 should be changed to §302.2	Make necessary change
305.3	The prohibition on private streets should be eliminated as it is unnecessary and not relevant to any zoning issue. In addition, this restriction raises questions as to liability and maintenance, and ultimately while the street may be a dedicated public right-of-way it's likely the District will require the owner to assume maintenance responsibilities, as is often the case today.	Delete this provision
502.1	Given the well-known fact that many areas of the city have soils with poor drainage, this section should allow [by-right] the ability for an owner to construct a storm water conveyance system that retains the same amount of water onsite that would otherwise percolate into the ground if drainage was better. These could include cisterns or below grade sumps that temporarily hold water and allow it to slowly seep into the ground. Since this meets the intent of the pervious surface regulations, owners should not be required to obtain a special exception. This by-right option should be allowed, perhaps with documentation from DOEE as to the sufficiency of the system. Without this option, owners could install pervious surfaces that don't actually work as intended due to poor infiltration.	Modify provision based on comment

SUBTITLE C	COMMENT(S)	RECOMMENDATION
701.4, 803.2 & 902.4	The areas that are currently excluded from parking and loading calculations should be carried over into the new Zoning Regulations. In addition, areas that do not contribute to the occupancy load of the building such as elevator shafts, pipe chases and vent shafts, stairwells should be excluded. As should areas devoted to parking (vehicle and bicycle) and access to parking (ramps and drive aisles) regardless of the location within the building The exclusions should be made consistent across each of these sections	Modify the necessary provisions to exclude all areas that are currently excluded under Sections 2118 and 2205 of the existing regulations, and exclude other areas that do not contribute to the occupancy load of a building. Make exclusions consistent across all sections in the proposed ZRR that pertain to calculation of parking and loading.
715.5	The requirement that "all areas otherwise not used for ingress and egress, aisles, and parking spaces shall be landscaped" could require more than the 10% landscaping that is required under 715.2.	Remove this language and just require all end islands to be landscaped.
717.3(d)	Reference to §712.6 and §712.7 is incorrect	Make necessary correction
802.1	The provisions relating to the quantity of long-term bicycle parking within office buildings should be reduced from 1 space per 2,500 square feet to 1 space per 7,500 square feet. For a typical 300,000 square foot office building, 120 bike spaces is excessive.	Revise provisions based on comment
901.1	The proposed loading requirement for lodging appears more burdensome and should be reevaluated. Currently, there is no loading requirement for hotels with less than 30 rooms, and for function space that is less than 10,000 square feet. By making everything based upon square footage, the inclusion of the area that would currently not be subject to loading could unnecessarily increase the required number of loading berths for the same hotel under the current regulations. For example, a hotel that has a total GFA of 200,000 sq ft, 200 rooms, and 10,000 sq ft of function space would currently need to provide two (2) 30-foot berths. Under the proposed ZRR, the same hotel would need to provide three (3) berths.	Adjust area ranges for required loading for hotels

SUBTITLE C	COMMENT(S)	RECOMMENDATION
901.9	This provision should permit stacking of two or more delivery spaces as well as stacking of delivery space and berths. Although stacked, continual access to delivery spaces can be effectively managed through a loading management plan.	Modify provision to allow stacking of berths, delivery spaces, or a combination.
902.2	This provision is not clear whether the total gross floor area of the building is used or just the gross floor area of the use with the highest requirement.	Provide necessary clarification
903.2	Check reference to Section 901.1. Is this saying there is no loading requirement for PDR zones, or is the reference supposed to be Section 903.1? This provision conflicts with the provisions of Subtitle J Section 207, which restrict parking and loading in PDR zones from being located on a transition setback area.	Confirm accuracy of reference and make necessary revisions to allow loading to be located within a PDR transition setback with proper screening.
903.6	The loading requirement for uses that share facilities pursuant to this section should be the same as that required under Section 902 for uses within the same building that share facilities.	Modify Section 902.2 to allow uses that share a party wall or lot line, or are separated by an alley, to share facilities without having to provide the combined number of loading facilities
907.2	It is not clear what types of development this provision applies to. Are single-family dwellings and other non-multifamily developments going to be subject to this requirement?	Provide necessary clarification
1001.2	ZRR should not cause any loss of existing rights for property owners who have made decisions and substantial investments based on an assumed set of development rights. Therefore, any area exempt from IZ under Chapter 26 of the currently Zoning Regulations should be exempt under ZRR.	Modify all necessary provisions in Section 1001 to make them consistent with the zone districts, areas, and uses identified in the existing Zoning Regulations as being subject to IZ (Section 2602.1) and exempt from IZ (2602.3).

SUBTITLE C	COMMENT(S)	RECOMMENDATION
1001.2 (cont.)	There are several areas currently located in the DD Overlay and TDR receiving zones that are exempt from inclusionary zoning (IZ). However, as currently written, there appears to be inconsistencies between the IZ provisions of Subtitle C Chapter 10 and some of the specific D zone provisions in Subtitle I that could make these areas subject to IZ as a result of the ZRR related map amendment (Z.C. Case No. 08-06C). For example, the areas identified as #7, 8, 9, 10, 13, 15, 16, 17, 18,19, 21, 23, 25, and 26 on Pages 4 - 6 of the Notice of Proposed Rulemaking for Z.C. Case No. 08-06C are not currently subject to IZ due to their base zoning or location in the DD Overlay. These areas correspond to the following proposed zones: D-4, D-5-R, D-6, D-6-R, and D-7. Inconsistencies between Subtitles C and I that result in the areas described above being subject to IZ should be corrected and/or clarified so that these areas remain exempt from IZ.	
1001.7	Citation to Section 1001.5(c) is incorrect	Confirm accuracy of citation to Section 1001.5(c)
1002.3(2)	MU-11 (current W-0) is not proposed to be subject to IZ. MU-33 is not a proposed zone in Z.C. Case No. 08-06C NC-14 and NC-16 are not proposed to be subject to IZ	Modify provision to accurately reflect the zones identified in Section 1001 as being subject to IZ, as modified based on comment above.
1503.4	Citation to Section 1503.2 is incorrect. Appears reference should be to 1503.1.	Confirm citation to Section 1503.2

SUBTITLE G: MIXED USE (MU) ZONES

SUBTITLE G	COMMENT(S)	RECOMMENDATION
202.1	Rules for measurement of courtyards for mixed-use buildings are not included.	Insert from current Section 776.5 and 776.6.
302	MU-2 total permitted density should be 6.0, rather than 2.5	Restore
506.1	Section 506.1 tracks the language of current W-0 zone, but applies to current W-0 through W-3, as written.	Add a new section for the MU-12 through MU-14 zones that tracks existing Section 934.2
507	This section provides a GAR for MU-11 (current W-0) through MU-14 (current W-3). However, there is no GAR requirement for the W-0 zone.	Revise this section to include only MU-12 through MU-14.
602.4	This section applies to MU-10 zone, and should not be in Chapter 6.	Delete
607.2	GAR for MU-21 should be 0.2, rather than 0.25	Revise
902.1	Total permitted FAR in the MU-28 zone should be 4.8 (per existing Section 1563.6(a)(i)), and not 4.0. FAR with IZ should be 5.76	Revise
902.1 & 903.1	For existing buildings in the MU-29 zone, the current height and bulk regulations should apply per current Section 1563.2	Revise
1100.1 & 1100.2	What is the purpose of Section 1100.1, which requires all existing alley tax lots that are not currently record lots, to be converted into record lots? Section 1100.2 allows only those existing alley tax lots that were created prior to May 12, 1958 to be converted to record lots. The result is that alley tax lots created after May 12, 1958 are not able to comply with new Section 1100.1.	See general comment above regarding retention of existing regulations pertaining to the regulation of development on alley lots.

SUBTITLE I: DOWNTOWN ZONES

SUBTITLE I	COMMENT(S)	RECOMMENDATION
200.2	The composite FAR is intended for both a multi-lot development and a single lot development in which the historic landmark or contributing building in a historic district sits only on a portion of a lot.	Delete the last phrase in § 200.2(d) to read as follows: ". . . to achieve a composite FAR for the entire development ~~if it is part of a multi-lot development~~."
200.3	Limit the prohibition of not increasing existing FAR to that portion of the lot on which the historic landmark or contributing building in a historic district sits.	Revise § 200.3 to read as follows: "If a historic landmark or contributing building in a historic district has an existing density of more than 6.0 FAR <u>on the portion of the lot within the historic structure's footprint</u>, it shall not increase its existing FAR <u>within the historic structure's footprint</u>, but shall be permitted. . . "
208	The Green Area Ratio for buildings in the D Zone has been significantly increased. For the higher D Zones (i.e., those equal to or greater than existing C-3-C), the GAR should be maintained at 0.2, which is consistent with the current regulations.	Revise § 208.1 to state that GAR is 0.2 For D-4 through D-8 zones.
212.2	This section applies parking requirements of Subtitle C, Chapter 7 to all required or provided parking spaces, including access and size. This requirement is a change from the current Zoning Regulations, which permit non-compliant spaces to be provided in a parking garage but do not permit such spaces to be counted for the zoning minimum. For example, tandem spaces are commonly provided in below-grade parking facilities, but only count as one space for zoning. This section would eliminate the ability for tandem spaces or other types of non-compliant spaces to be provided above the minimum number of parking spaces required by zoning. Furthermore, sections of Subtitle C, Chapter 7 state in various places that the requirements only apply to required parking. Thus, Subtitle C should govern.	Revised § 212.2 to read as follows: Vehicular parking~~, whether required or provided,~~ shall be subject to the requirements, permission and conditions of Subtitle C, Chapter 7.
303	This section requires special exception relief for large format retail uses. These uses should be permitted as a matter of right in the D-4 through D-8 zones.	Revise § 303.1(d) to require a special exception for large format retail uses in the D-1 through D-3 zones.

SUBTITLE I	COMMENT(S)	RECOMMENDATION
305.3	Subsection (a) includes incorrect citations.	Revise § 305.3(a) to read as follows: "Historic properties subject to Subtitle I §§ 200.2 and 200.3."
306	This section is duplicative of § 212.	Delete §§ 306.1 through 306.4; incorporate §§ 306.5 through 306.7 into § 212.
306.6	If Board of Zoning Adjustment approval is required for an all-day, commuter parking lot, the word "variance" should be struck in subsection (d) and replaced with "special exception", which was consistent with previous versions of ZRR for Subtitle Y, Chapter 8. Chapter 8 is no longer relating to special exceptions, so this reference should now be changed.	Correct reference to Subtitle Y in § 306.6.
307	The loading provisions should be included with the other development standards for this Subtitle.	Move § 307 to Chapter 2 of Subtitle I.
401.1(a)	This provision requires access through an improved and accessible alley, if one exists. This provision should be eliminated to provide greater flexibility of design and access, especially for larger projects that have multiple uses and multiple street frontages.	Delete § 401.1(a).
532.1, 540.1, 5481, 556.1, 563.1, & 577.1	Each of these sections states that the permitted height is 130 feet for a building with frontage on a street with a right-of-way width of 110 feet and the permitted height is 110 feet for a building with frontage on a street with a right-of-way width of at least 90 feet. This provision does not provide for a height of 120 feet for buildings fronting on streets with a right of way width of 100, which is currently allowed and seen in parts of the existing DD Overlay. See § 1701.7 of Title 11.	Revise the stated sections to provide that maximum permitted height is 130 feet for a building with frontage on a street with a right-of-way width of 110 feet and the permitted height is that permitted by the 1910 Height Act for a building with frontage on a street with a right-of-way width of less than 110 feet.
532.2	This section should be repeated following each section identified in the comment above or should be included in a general provision earlier in the subtitle.	Revise as necessary

SUBTITLE I	COMMENT(S)	RECOMMENDATION
503.3, 510.2, 517.2, 525.3, 532.4, 540.3, & 548.3	This provision limits height of building on the portion of the site on which a historic structure sits. We request that the Commission eliminate this provision for the D-5 and D-5-R zones. This provision has the impact of potentially reducing the existing permitted height of some properties by up to 40 feet, which is inconsistent with the Office of Planning's statement that it would maintain all existing entitlements. In addition, for those zones in which it is maintained, the language should be revised to be consistent with § 200.2.	Delete § 540.3 and § 548.3. In addition, revise the language to state that the height is only limited "on the portion of the lot within the historic structure's footprint", consistent with § 200.2.
555.4	This provision limits the non-residential density in the D-6 zone to 6.5 FAR without credits. Currently, the permitted non-residential density for these properties is 8.5 FAR or 10.0 FAR depending upon street frontage. See § 771.2 and § 771.5 of Title 11.	Delete § 555.4.
609.5	The current requirements for the Chinatown retail/arts requirement refers to "FAR equivalent" not ground floor gross floor area. See § 1705.2 of Title 11	Revise § 609.5(a) and § 609.6(a) to state "FAR equivalent in place of "ground floor gross floor area.
609.5	This provision does not reduce the Chinatown retail/arts requirement to 0.5 FAR for projects that are subject to a residential requirement, which is currently provided for in § 1705.2 of Title 11.	Revise § 609.5(a) to include the following phrase: ". . ., provided that the requirement shall be 0.5 FAR equivalent for a building in the D-1-R, D-4-R, and D-5-R zones."
801.1(b)	Reference to Subtitle U § 720.1 as cross-reference is no longer accurate	Update to correct cross-reference or delete reference
801.1(d)	This provision addresses "conversions of TDRs or eligible square footage for which TDRs were not generated prior to effective date of [the ZRR]".	
801.1(e)	This provision references "conversion of unallocated CLD gross floor area" but does not specify if that includes CLD for which a covenant has been recorded or for properties/developments that qualify for CLD allocation under the current Zoning Regulations but have not yet located an allocation partner	Provide clarification

SUBTITLE I	COMMENT(S)	RECOMMENDATION
802.2	This provision establishes credit generation at a base rate of 1 credit per 1 square foot of residential development, and for properties with a residential requirement (D-4-R, D-5-R, D-6-R) only allows credit generation for residential exceeding minimum residential requirement. This approach diminishes rights currently provided in Zoning Regulations to owners of properties within Housing Priority Areas A, B and C who develop residential. Under the current Regulations, those properties developed for residential north of Massachusetts Ave generate TDRs at a 1:1 ratio from the first square foot of residential developed (properties south of Massachusetts generate at a ratio of 2 TDRs to each square foot of residential developed). In addition, these properties generate Combined Lot Development "rights" for residential square footage developed above the residential requirement, up to the matter of right maximum. Under the current proposal, property owners developing residential do not receive the benefit of both current incentives (CLD and TDR).	Revise § 802.1 so as to provide that all residential developed in areas subject to Subtitle I shall generate credits for all the new residential created at a rate of 1 credit per square foot of residential developed AND FURTHER that all residential developed in areas subject to a residential requirement (D-4-R, D-5-R and D-6-R – or at least those properties currently in the Housing Priority Area) shall also generate additional credits for residential constructed over their residential requirement.
802.2(d)	This provision appears to provide credits at a ratio of 2:1 for properties currently in Housing Priority Area B. It should also extend to Housing Priority Area C.	Revise § 802.2(d) to include lots and squares comprising Housing Priority Area C in § 1708(c) of current Regulations.
803.2(d) & 803.2(e)	References to Subtitle U are incorrect and need to be updated	Revise
805.5(f)	This section should be revised to clarify that calculations required are for "gross floor area"	Revise § 805.5(f) to state "Gross floor area calculations for the entire building or buildings and for each use;"
805.6(b)	Reference to Subtitle I § 805.7(b) is incorrect and needs to be updated	Revise reference to reference Subtitle I § 805.8(b)
805.7	Escrow formula reference at $30 per square foot is twice the current requirement and significantly higher than current market pricing for TDR and CLD transactions	Consider replacing $30 per square foot escrow with lower/current price ($15 per square foot)

SUBTITLE I	COMMENT(S)	RECOMMENDATION
805.10	Unclear what document is intended to be referenced as “instrument” in this provision. Is it the escrow agreement referenced in § 805.6(b) or the credit certificate itself (also referenced as “instrument at §§§ 805.2, 805.3, 805.5? If reference is to the latter, this provision needs to be reconciled with § 805.1. What instrument in § 805.10 needs to be recorded prior to Zoning Administrator issuing a credit certificate?	Clarify and provide clarification as necessary
806.1	Provision references CLD and TDR covenants recorded in Land Records prior to effective date of new regulations. To the extent any such covenants are in process as of effective date, they should be vested. Also, a number of property owners who have already undertaken preferred uses such as residential may not have entered into CLD covenants because they have not found a property/owner to partner with in allocating density. Those owners should not lose such rights in the transition to the new regulations.	
806.2	This provision references “unallocated or unused TDRs and CLDs”. Clarification is needed for these terms. What is the difference between unallocated and unused? Does unused TDRs include TDRs that have been transferred by certificate to a property but have not yet been utilized for construction? Also, in this paragraph but not elsewhere “Credit Certificate” is capitalized. Should reconcile with other such references.	
807.13(e)	This section should be revised to clarify that calculations required are for “gross floor area”	Revise § 807.13(e) to state “Gross floor area calculations for the entire building or buildings and for each use;”
807.16	As with § 805.10, the relationship between “instrument” and “credit certificate” issued by the Zoning Administrator is unclear. See § 807.7, which references an “instrument” filed with the Zoning Administrator and recorded.	
900.3 & 900.6	These provisions appear duplicative. Please confirm.	If duplicative, delete one of the provisions.

SUBTITLE I	COMMENT(S)	RECOMMENDATION
900.12(a)	References to §805.6 seems incorrect. Should it instead reference § 805.5?	
900.12(b)(c) & (d)	References to “credit certificates”, “certificates of credit transfer”, “certificates of conversion” and “acknowledgment of credits instrument” are confusing and should be defined/differentiated.	
900.17	Language in this section does not provide for scenario where non-residential use is later converted to residential. In that case, credits should be able to be retransferred as well as new credits generated for the conversion.	

SUBTITLE J: PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES

SUBTITLE J	COMMENT(S)	RECOMMENDATION
205.1 & 207.1	The regulations are not clear as to whether the transition setback is required in addition to the rear setback, or whether the rear yard setback can be included in the transition setback area.	
207.4	Section 207.4 states that parking and loading cannot be located within the transition setback area. Moreover, Section 207.6 also requires the erection of a fence or brick or stone wall to extend along the required setback. Depending upon the size and shape of the lot, the transition setback area might be the only location to access and/or provide parking and/or loading. Also, Subtitle C Section 903.2, allows loading to be located on a lot that is adjacent to residential zones so long as they are six feet from a side lot line.	Amend Section 210 to allow relief from the requirements of Section 207 by special exception. Revise Section 400, if necessary, to include criteria for the BZA to consider for applications for relief from Section 207.
202.1	There are several uses that are appropriate for PDR zones that would be significantly limited as a result of the limits on FAR placed on “restricted uses.” These could include uses within the “Arts, Design, and Creation” use group such as an artist studio, kiln-firing, metal-working, wood –working, glass-blowing, uses with the “Animal Sales, Care, and Boarding” use group such as animal shelters, and uses within the “Agriculture, Large” use group such as greenhouses or horticultural nursery. In addition, the Ward 5 Works Plan, prepared by DCOP in August 2014, encourages “Make/Live Districts” in PDR zones, where certain industrial-type uses would be located on the ground floors of buildings with residential above. The plan states “with a higher overall density, the land could be used more productively while still providing as much dedicated space for production uses. Cross subsidy from the residential uses could reduce the required rents for the first-floor PDR uses.” It also states that creation of new Make/Live Districts “would incentivize new maker/PDR spaces on the first floor(s) with residential uses above, possibly through the use of a density bonus.” The density limitations proposed in this section could be a disincentive to the success of creating these new “creative-class” neighborhoods.	Remove the FAR limitation on restricted uses or revise to make it much closer to what is allowed for permitted uses. Alternatively, add the “Arts, Design, and Creation,” “Animal Sales, Care, and Boarding,” and the “Agriculture, Large” use groups to the list of uses that can achieve the maximum FAR in Section 202.1

SUBTITLE U: USE PERMISSIONS

SUBTITLE U	COMMENT(S)	RECOMMENDATION
502	Matter of right uses currently permitted in SP that are not included in MU Use Group A include Art Gallery (not included in “art design and creation”); religious reading room; ticket office; public school; greenhouse or horticultural nursery, parking garage on an alley lot; other uses (including residential) that currently carry over from the residential zones; and other uses customary incidental and subordinate (as in Subtitle U Section 570(x) for MU-3; and accessory uses as permitted in current Section 502	Add a section to allow all uses currently permitted in R, RF and RA zones. Add other uses currently permitted as a matter of right in SP zones.
504	Special exception uses currently permitted in SP zones that are not permitted as special exceptions in MU Use Group A include parking lots; clerical/religious group residences	Restore these as permitted special exception uses.
504.1(j)	This section is the equivalent of Section 518 of the existing Zoning Regulations which pertains to uses permitted in the current SP-2 District as a special exception. However, it appears as a result of making eating and drinking establishments a separate use group, these uses would not be permitted as a special exception in the proposed MU-2 zone, the SP-2 equivalent.	Modify Section 504.1(j) to include the eating and drinking establishment use group. This section would then pertain to the following: “Retail, service (general), and eating and drinking establishment uses subject to the following conditions:”
510.1	Certain uses currently permitted in existing C-1 are not permitted in MU Use Group D	Add a section to allow uses that are permitted in MU Use Group A, in Use Group D. Allow parking lots in Use Group D.
511	Certain uses permitted by special exception in C-1 are not permitted by special exception in MU Use Group D—bowling alleys; auto accessory sales	Restore those uses to the list of special exception uses.
513.1(a)	Pet Shop, currently permitted by special exception in C-2, is not permitted by special exception in MU Use Group E	Revise Subtitle U Section 513.1(a) to allow Animal Sales, Care and Boarding
515	Fast food restaurant, mechanical parking garage and public swimming pool are permitted in C-3, but not included in MU Use Group F	Restore those uses in MU Use Group F

SUBTITLE U	COMMENT(S)	RECOMMENDATION
516	Electric equipment facility is permitted by special exception in C-3 zone, but not included in special exception uses in MU Use Group F	Restore

END OF COMMENTS