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5943207	Submitted to ODAI	Proposed Rulemaking	Zoning Commission Notice of Proposed Rulemaking: Case No. 14-13A (Text Amendment — 11 DCMR: Technical Correction to Z.C. Order No. 14-13A (Penthouse Regulations))	4/1/2016 Vol 63/15	3/23/2016 09:11:42
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5940200	Submitted to ODAI	Notices, Opinions	Board Of Zoning Adjustment - Order No. 19201 - Bourbon Two Real Estate, LLC - ANC 1C	4/1/2016 Vol 63/15	3/21/2016 11:06:03
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9:28 AM

ZONING COMMISSION
District of Columbia
CASE NO.14-13A
EXHIBIT NO.2

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 14-13A
(Text Amendment — 11 DCMR)
Technical Correction to Z.C. Order No. 14-13A (Penthouse Regulations)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend the current and newly adopted versions of the Zoning Regulations (Title 11 DCMR) to make technical corrections to Z.C. Order No. 14-13 (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted amendments to the currently effective version of the Zoning Regulations (Current Regulations) governing rooftop penthouse as well as conforming amendments to other provisions, including the provisions of Chapter 26, INCLUSIONARY ZONING. The substance of the amendments was later included by the Commission in the version of Title 11 DCMR that will become effective on September 6, 2016 (2016 Regulations), which was adopted by the Commission through a Notice of Final Rulemaking published in Part II of the March 4, 2016 edition of the *District of Columbia Register*.

The first correction would reinsert paragraph (f) into § 2602.3 of the Current Regulations, which the Order inadvertently omitted from its amendment to that subsection. The Order made no mention of Subtitle C § 1001.6 of the 2016 Regulations, which contains the same text as the omitted § 2602.3(f). Therefore, no amendment to Subtitle C § 1001.6 is needed.

The second correction clarifies changes to the affordable housing requirement for habitable penthouse space for a residential building, when the owner 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 when one (1) or more of three (3) conditions are met. This correction would be accomplished by the amendment of § 2607.9 of the Current Regulations and Subtitle C § 1006.10 of the 2016 Regulations.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to the Current Regulations are proposed:

Chapter 26, INCLUSIONARY ZONING, of Title 11 DCMR, ZONING, is amended as follows:

§ 2602, APPLICABILITY, § 2602.3 is amended by reinserting paragraph (f) so that the entire provision reads as follows:

2602.3 This chapter shall not apply to:

- (a) Hotels, motels, or inns, except for new penthouse habitable space as described in § 2602.1(d);

- (b) Dormitories or 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, or single room occupancy developments;
- (e) Except for new penthouse habitable space as described in § 2602.1(d), properties located in any of the following areas:
 - (1) The Downtown Development or Southeast Federal Center Overlay Districts;
 - (2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;
 - (3) The W-2 zoned portions of the Georgetown Historic District;
 - (4) The R-3 zoned portions of the Anacostia Historic District;
 - (5) The C-2-A zoned portion of the Naval Observatory Precinct District; and
 - (6) The Eighth Street Overlay; and
- (f) Any development financed, subsidized or funded in whole or in part by the federal or District government and administered by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority and that meets the requirements set forth in § 2602.7.

Section 2607, OFF-SITE COMPLIANCE, § 2607.9 is amended by adding the phrase “, except that the calculation of § 414.15 shall be based on the maximum permitted residential FAR,” to the introductory paragraph, so that the entire provision reads as follow:

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.

The following amendment to the 2016 Regulations is proposed:

Chapter 10, INCLUSIONARY ZONING, of Subtitle C of Title 11 DCMR, ZONING, § 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING is amended by adding the phrase “, except that the calculation of § 1505.15 shall be based on the maximum permitted residential FAR,” to the introductory paragraph, so that the entire provision reads as follows:

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.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx> or to zcsubmissions@dc.gov.

Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.