

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 14-13A
Z.C. Case No. 14-13A
(Text Amendment – 11 DCMR)
Technical Correction to Z.C. Order No. 14-13 (Penthouse Regulations)
May 9, 2016

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 the adoption of amendments to the current and newly adopted versions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (DCMR)) to make technical corrections to Z.C. Order No. 14-13. Because the action was technical in nature, no public hearing was required pursuant to the Consent Calendar provisions set forth in 11 DCMR § 3030 and, for that same reason, no referral to the National Capital Planning Commission was made.

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 penthouses, 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 reinserts 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 amendment is made to both § 2607.9 of the Current Regulations and Subtitle C § 1006.10 of the 2016 Regulations.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 1, 2016, at 63 DCR 004884. No comments were received in response.

The Commission took final action to adopt the amendments at a public meeting on May 9, 2016, making no changes to the proposed text. As to the Current Regulations, the Final Rulemaking is effective upon publication of this notice in the *D.C. Register*. As to the 2016 Regulations, the Final Rulemaking shall become effective on September 6, 2016.

Current Regulations:

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

Section 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.

2016 Regulations:

Chapter 10, INCLUSIONARY ZONING, of Subtitle C of Title 11 DCMR, ZONING, is amended as follows:

Section 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:

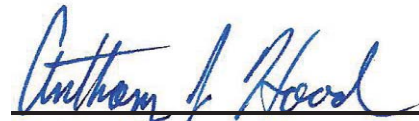
- 1006.10 Inclusionary units resulting from the set-aside required for penthouse habitable space as described in Subtitle C § 1001.2(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a

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.

On May 9, 2016 upon a motion by Vice Chairperson Cohen as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the rulemaking and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Michael G. Turnbull, and Peter G. May to approve).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on June 3, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.