

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 14-13C

(Text Amendment - 11 DCMR)

Technical Corrections to Z.C. Order No. 14-13 (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 Rep1.)), hereby gives notice of its intent to amend the current and newly adopted versions of the Zoning Regulations (Title 11 DCMR) to make a technical correction to amendments made by 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 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 Current Regulations provide, and the 2016 Regulation will provide, that properties that are subject to the Inclusionary Zoning (IZ) regulations must set-aside a certain amount of gross floor area for IZ units. The regulations also allow certain of these properties to increase matter-of-right density by up to twenty percent (20%).

The amount of the IZ set-aside is (depending on the constriction type or zone) the greater of eight percent (8%) or ten percent (10%) of the gross floor area of the building devoted to residential use including habitable penthouse space, or fifty percent (50%) or seventy-five percent (75%) of the bonus density utilized. The insertion of the reference to penthouse habitable space was added by the Order to ensure that the construction of such space would add to the amount of the required set-aside.

In beginning to apply this revised formula, the Department of Consumer and Regulatory Affairs noticed that when a set-aside was based upon percentage of bonus density used, the resulting set-aside was no greater than what would have been required prior to the amendment. This was clearly contrary to the Commission's intent. The Office of Planning, through a report dated May 2, 2016, requested a technical correction to the Order to eliminate this anomaly. The report recommended, and the Commission proposes, that when the set-aside is based upon the percentage of the bonus density utilized, an additional set-aside equal to eight percent (8%) or ten percent (10%) of any penthouse habitable space be added.

Final rulemaking action shall be taken in not less than fourteen (14) days from the date of publication of this notice in the *D.C. Register*, which is less than the thirty (30) day period ordinarily required. A reduced comment period is permitted by D.C. Official Code § 2-505(a) when "good cause" to do so is found and stated in the notice. As noted, this amendment is a technical correction intended to match the words of the prior amendment with the Commission's

intent. Since the public already has been afforded a full opportunity to comment on the principle that penthouse habitable space should increase to the IZ set-aside, good cause exists for a reduced period to comment on text to assure that this increase will result in all instances.

The following amendments to the Current Regulations are proposed:

Chapter 26, INCLUSIONARY ZONING, of Title 11 DCMR, ZONING, § 2603, SET-ASIDE REQUIREMENTS, is amended as follows:

Subsection 2603.1 is amended by adding the phrase “plus an area equal to ten percent (10%) of the penthouse habitable space as described in § 2602.1(d)” after the phrase “of the bonus density being utilized for inclusionary units”, so that the entire provision reads as follows:

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).

Subsection 2603.2, is amended by adding the phrase “plus an area equal to eight percent (8%) of the penthouse habitable space as described in § 2602.1(d)” after the phrase “of the bonus density being utilized for inclusionary units”, so that the entire provision reads as follows:

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).

The following amendments to the 2016 Regulations are proposed:

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

§ 1003, SET-ASIDE REQUIREMENTS, § 1003.1, is amended by adding the phrase “plus an area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1001.2(d)” after the phrase “of its achievable bonus density to inclusionary units”, so that the entire provision reads as follows:

1003.1 An inclusionary residential development for which the primary method of construction does not employ steel or steel and concrete frame structure and which is located in a zone with a by-right height limit of fifty feet (50 ft.) or less shall set aside the greater of ten percent (10%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or seventy-five percent (75%) of its achievable bonus density to inclusionary units plus an area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1001.2(d).

§ 1003, SET-ASIDE REQUIREMENTS, § 1003.2, is amended by adding the phrase “plus an area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1001.2(d)” after the phrase “of its achievable bonus density to inclusionary units”, so that the entire provision reads as follows:

1003.2 An inclusionary residential development of steel or steel and concrete frame construction shall set aside the greater of eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or fifty percent (50%) of its achievable bonus density to inclusionary units plus an area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1001.2(d).

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than fourteen (14) 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.