

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 14-13C
Z.C. Case No. 14-13C
(Text Amendment – 11 DCMR)
Technical Correction to Z.C. Order No. 14-13 (Penthouse Regulations)
June 13, 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 Rep1.)), hereby gives notice of the adoption of amendments to the current version and to the adopted, but not yet effective version of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (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, Subtitle C (General Rules) 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 corrections concern the set-aside requirements under the Inclusionary Zoning (IZ) regulations as set forth in § 2602 of the Current Regulations and Subtitle C, Chapter 10 of the 2016 Regulations, which provide that properties that are subject to the 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 construction 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 amendments add new language to §§ 2602.1 and 2602.2 of the Current Regulations and Subtitle C §§ 1003.1 and 1003.2 of the 2016 Regulations to clarify 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 should be added.

The amendments address an anomaly brought to the attention of the Commission by the Office of Planning that has not been the basis of any permits issued, as DCRA recognizes that it is contrary to the Commission's intent. As such, the Commission considered the amendments as being modifications of little or no importance or consequence and therefore properly proposed pursuant to 11 DCMR § 3030, which permits such modifications to be adopted without a hearing or referral to the National Capital Planning Commission.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 20, 2016, at 63 DCR 7708. No comments were received in response.

The Commission took final action to adopt the amendments at a public meeting on June 13, 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, § 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).

2016 Regulations:

Subtitle C, Chapter 10, INCLUSIONARY ZONING, GENERAL RULES, 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).

On June 13, 2016 upon a motion by Commissioner Turnbull, as seconded by Chairman Hood 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 and adopt).

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 July 1, 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*.